

Addendum 2
For
Financial Project Number: 424014-1-52-01; 424014-1-32-01
Contract Number: ESL23

Cocoa-Brevard Operations Center Construction Manager @ Risk Contract

The Request for Proposal (RFP) is amended as follows:

The RFP is replaced in its entirety to include revisions to Section 6.0 adding requirements for the submittal of the Technical Proposals.

Attachment 1 – Agreement between Owner and Construction Manager is amended as follows:

Attachment No. 1 is replaced in its entirety to include additional sections 16.20 Drug-Free Workplace and Section 16.21 Scrutinized Vendors

Posted: April 14, 2015, 09:00AM

By: Roger Masten

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes.

Please acknowledge receipt of this Addendum 1 by completing the bottom portion and return to Catrina Wilson at catrina.wilson2@dot.state.fl.us and Roger Masten at roger.masten@dot.state.fl.us.

Company Name: _____

Received by: _____

Date: _____

Please note: Any question should be addressed in the Bid Question and Answer Website.



ADDENDUM No. 2
6April15

REQUEST FOR TECHNICAL PROPOSALS

FOR

**COCOA-BREVARD OPERATIONS CENTER
CONSTRUCTION MANAGER @ RISK CONTRACT**

FINANCIAL PROJECT NUMBER(S)

424014-1-52-01
424014-1-32-01

DISTRICT CONTRACT NUMBER

E5L23

FLORIDA DEPARTMENT OF TRANSPORTATION

DISTRICT FIVE

CONSTRUCTION MANAGER @ RISK CONTRACT

TABLE OF CONTENTS

| <u>Section</u> | <u>Page</u> |
|--|-------------|
| 1.0 PURPOSE..... | 1 |
| 2.0 CONSTRUCTION MANAGER FIRMS | 1 |
| 3.0 CONSTRUCTION MANAGER SERVICES | 1 |
| 4.0 LENGTH OF CONSTRUCTION CONTRACT..... | 1 |
| 5.0 CONTRACT PROVISIONS AND PROPOSED METHOD OF COMPENSATION | 1 |
| 5.1 Base Contract | 1 |
| 5.2 Contractor's Protective Public Liability and Property Damage Liability | 1 |
| 5.3 DBE Participation | 2 |
| 5.4 DBE and Non-DBE Small Business Aspiration Goal | 3 |
| 5.5 Method of Compensation..... | 4 |
| 6.0 TECHNICAL PROPOSAL | 4 |
| 6.1 Technical Proposal Topics and Scoring Value..... | 4 |
| 6.2 Copyrighted Material | 6 |
| 7.0 QUESTION AND ANSWER (Q&A) SESSION..... | 6 |
| 7.1 Questions | 6 |
| 7.2 Time Limit..... | 6 |
| 7.3 Follow-Up Questions..... | 6 |
| 7.4 Attendance | 7 |
| 7.5 Presentation Material | 7 |
| 7.6 Schedule of Sessions | 7 |
| 8.0 DEADLINE FOR QUESTIONS..... | 7 |
| 9.0 CONSTRUCTION MANAGER SELECTION..... | 8 |
| 10.0 CONTRACT DISCUSSIONS AND NEGOTIATIONS..... | 8 |
| 11.0 ADDITIONAL REQUIRMENTS | 8 |
| 11.1 E-Verify..... | 8 |
| 11.2 Review of Proposer's Facilities and Qualifications..... | 9 |
| 11.3 Scrutinized Companies Lists | 9 |
| 11.4 Additional Terms and Conditions..... | 9 |
| 11.5 Responsiveness of Proposals | 9 |
| 11.6 Mail or Deliver Proposal To: (Do Not Fax)..... | 10 |
| 11.7 Modifications, Resubmittal, and Withdrawal..... | 11 |
| 11.8 Posting of Intended Decision/Award..... | 11 |
| 11.9 Award of the Contract | 12 |
| 12.0 EXISTING FACILITY | 13 |
| 12.1 Site Visit | 13 |

CONSTRUCTION MANAGER @ RISK CONTRACT

ATTACHMENTS

- 1 AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER
- 2 CONSTRUCTION CONTRACTOR AFFIDAVIT FORMS
- 3 FDOT PROCUREMENT FORMS

CONSTRUCTION MANAGER

1.0 PURPOSE

The Florida Department of Transportation (the "Department") requires Construction Manager @ Risk Contractor services in connection with construction of the Cocoa-Brevard Operations Center in District Five, Brevard County, Florida.

Information is necessary to complete the evaluation of each firm's ability to provide the desired services. As a result, each firm is requested to submit a Technical Proposal and appear for a Question and Answer (Q&A) Session with Department staff for the anticipated work.

2.0 CONSTRUCTION MANAGER FIRMS

The following firms are being considered for this project:

Ajax Building Corporation - Maitland, FL
Biltmore Construction - Belleaire, FL
Charles Perry Partners, Inc. - Oviedo, FL
Ivey's Construction, Inc. - Merritt Island, FL

3.0 CONSTRUCTION MANAGER SERVICES

For a detailed description of the required Construction Manager services, refer to Attachment 1, AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER.

4.0 LENGTH OF CONSTRUCTION CONTRACT

The Construction Manager services for the Pre-Construction and Construction Phases, as outlined in the Base Contract, shall extend for a maximum of nine (9) months for the Pre-Construction Phase and a maximum additional twenty-four (24) months for the Construction Phase. The Construction Phase will commence upon acceptance of a Guaranteed Maximum Price (GMP), as outlined in the Base Contract. The firms shall consider this requirement for their Technical Proposal and Q&A Session.

5.0 CONTRACT PROVISIONS AND PROPOSED METHOD OF COMPENSATION

The following information is furnished to the Construction Manager for consideration:

5.1 BASE CONTRACT

The AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER is included as Attachment 1.

5.2 CONTRACTOR'S PROTECTIVE PUBLIC LIABILITY AND PROPERTY DAMAGE LIABILITY

The Construction Manager selected to perform the desired services must have liability insurance as defined by the Base Contract.

5.3 **DBE PARTICIPATION**

The Department encourages Disadvantaged Business Enterprise (DBE) companies to compete for Department construction projects, and also encourages non-DBE companies to use DBE contractors.

DBE Utilization

The Department began its DBE race neutral program January 1, 2000. **Contract specific goals are not placed on federal/state contracts**; however, the Department has an overall 9.91% DBE goal it must achieve. In order to assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this letting.

As you prepare your bid, please monitor potential or anticipated DBE utilization for contracts. When the low bidder executes the contract with the Department, information will be requested of the contractor's DBE participation for the project. While the utilization is not mandatory in order to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Florida's DBE Program, and supports contractors' Equal Employment Opportunity and DBE Affirmative Action Programs.

Any project listed as 0% DBE availability does not mean that a DBE may not be used on that project. A 0% DBE availability may have been established due to any of the following reasons: limited identified subcontracting opportunities, minimal contract days, and/or small contract dollar amount. Contractors are encouraged to identify any opportunities to subcontract to DBEs.

Please contact the Equal Opportunity Office at (850) 414-4747 if you have any questions regarding this information. Forms may be downloaded at: [Error! Hyperlink reference not valid.](#)

DBE Reporting

If you are the prime contractor on a project, enter your DBE participation in the Equal Opportunity Compliance system prior to the pre-construction or pre-work conference for all federal and state funded projects. This **will not** become a mandatory part of the contract. It will assist the Department in tracking and reporting planned or estimated DBE utilization. During the contract, the prime contractor is required to report actual payments to DBE and MBE subcontractors through the web-based Equal Opportunity Compliance (EOC) system.

All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact EOOHelp@dot.state.fl.us.

Bid Opportunity List

The Federal DBE Program requires states to maintain a database of all firms that are participating or attempting to participate on FDOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FDOT-assisted projects, including both **DBEs and non-DBEs**.

Please complete the Bidders Opportunity List through the Equal Opportunity Compliance system within three (3) business days of submission of the bid or proposal for ALL subcontractors or subconsultants who quoted to you for specific project for this letting. The web address to the Equal Opportunity Compliance system is: <https://www3.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/LogIn?ReturnUrl=%2fEqualOpportunityCompliance%2f>.

DBE/AA Plans

Contractors bidding on FDOT contracts are to have an approved DBE Affirmative Action Plan (FDOT Form 275-030-11B) on file with the FDOT Equal Opportunity Office before execution of a contract. DBE/AA Plans must be received with the contractors bid or received by the Equal Opportunity Office prior to the award of the contract.

Plans are approved by the Equal Opportunity Office in accordance with Ch. 14-78, Florida Administrative Code. Plans that do not meet these mandatory requirements may not be approved. Approvals are for a three (3) year period and should be updated at any time there is a change in the company's DBE Liaison Officer and/or President. Contractors may evidence adoption of the DBE/AA Policy and Plan and/or a change in the designated DBE Liaison officer as follows:

- Print the first page of the document on company stationery ("letterhead") that indicates the company's name, mailing address, phone number, etc.
- Print the company's name in the "___" space; next to "Date" print the month/day/year the policy is being signed; record the signature of the company's Chief Executive Officer, President or Chairperson in the space next to "by" and print the full first and last name and position title of the official signing the policy.
- Print the DBE Liaison's full name, email address, business mailing address, and phone number the bottom of email.

Email the completed and signed DBE AA Plan to: eeofrms@dot.state.fl.us.

The Department will review the policy, update department records, and issue a notification of approval or disapproval; a copy of the submitted plan will not be returned to the contractor.

5.4 DBE AND NON-DBE SMALL BUSINESS ASPIRATION GOAL

It is the policy of the Department to encourage the participation of small businesses and DBEs in all facets of the business activities of the Department, consistent with applicable laws and regulations. The Department has established an aspiration goal of ten percent (10%) DBE usage and an additional three percent (3%) non-DBE small business usage for the subject project. Firms proposing for this project shall aspire to have ten percent (10%) or more of the total contract costs

performed by DBEs, and an additional three percent (3%) or more of the total contract costs performed by non-DBE small businesses. Although not a contract requirement, the Department believes that the aforementioned aspiration goal can realistically be achieved based on current availability of DBEs and small businesses. The Department further believes that the thirteen percent (13%) overall goal can be achieved through race neutral means, using standard competitive procurement processes. Pursuant to the provisions of Section 339.0805, Florida Statutes, and Rule 14.78.005, Florida Administrative Code, the Department has adopted rules to provide certified DBEs opportunities to participate in the business activities of the Department as vendors, contractors, subcontractors, and consultants. The Department has adopted the DBE definition set forth in Code 49 of Federal Regulations Section 26.5. The Department's DBE directory may be found at the following website: <https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp> Firms agree to apply their best efforts to utilize qualified non-DBE small businesses as vendors, contractors, subcontractors, and consultants for the project. Qualifications for small businesses may be found at the following website: <http://www.dot.state.fl.us/EqualOpportunityOffice/sizeStandards.shtm> Firms will submit the [Aspiration Goal Form for "DBE" and "Non-DBE Small Business" Firms](#) at the Pre-Construction Conference.

5.5 METHOD OF COMPENSATION

The Construction Manager shall be compensated in accordance with terms defined in the Base Contract.

6.0 TECHNICAL PROPOSAL

The Construction Manager being considered for this project is required to submit a Technical Proposal. The Technical Proposal shall include sufficient information to enable the Department to evaluate the technical capability of the Construction Manager to provide the desired services. The proposal shall be significant to the project as detailed in the Basis of Design attached to the Base Contract. The Technical Proposal shall be limited to ten (10) pages.

One (1) Original and Five (5) copies, plus One (1) CD/DVD of the Technical Proposal shall be submitted to the Florida Department of Transportation, by the due date and time shown in the Procurement schedule section on page one of this advertisement, Attn. Ms. Catrina Wilson, as per section 11.6 below

6.1 TECHNICAL PROPOSAL TOPICS AND SCORING VALUE

6.1.1 PROJECT STAFFING STRATEGY AND RELATED EXPERIENCE 0-25 Points

The Construction Manager shall explain the organization of its team, functional responsibility of each member, name of the Project Manager, and names and roles of key personnel. The Construction Manager shall discuss the staffing quality and availability along with experience on similar projects. The Construction Manager shall present the staff experience on similar projects and what uniquely qualifies them to successfully perform the work specifically outlined in the Base Contract. This includes discussion of past projects of similar nature that demonstrate this pertinent experience.

Any individual proposed at the time of the Technical Proposal who is

not employed by the Construction Manager (or proposed subcontractor) will not be considered during evaluation or selection as part of the project team.

6.1.2 UNDERSTANDING OF THE PROJECT

0-10 Points

The Construction Manager shall demonstrate their understanding of the scope of services and of any unique issues involved in the project, including knowledge of the site and local conditions.

6.1.3 PROJECT APPROACH

0-15 Points

The Construction Manager shall present their approach for the project. The Construction Manager shall discuss unique concepts and cost saving suggestions, their quality control plan, and the reasonableness of the proposed schedule based on the quantity of the personnel available. The Construction Manager shall discuss their proposed method for maintaining coordination between their own staff, subcontractors, the project designer, the Department, and other government or non-government agencies.

6.1.4 INNOVATIONS

0-10 Points

The Construction Manager shall discuss innovative ideas and approaches to the project that can enhance the success of the project's quality, cost, and schedule. Concepts may include cost effective ideas such as possible relocation of the Owner's operation to a remote site to facilitate project phasing.

6.1.5 SCHEDULE

0-10 Points

The Construction Manager shall present their proposed schedule for both the Pre-Construction and Construction Phases. It is the desire of the Department to minimize the number of construction phases and disruption to the existing facility, which is to remain operational throughout the life of this project.

6.1.6 DESIGN PLANS REVIEW, EVALUATION, AND RECOMMENDATIONS

0-15 Points

The Construction Manager shall present their project review and QA/QC approach. The Construction Manager shall discuss their methodology for working in concert with the designer on all project issues. This shall include frequency estimates, reviews, staff requirements (Department and Construction Manager), required meetings, meeting format, and turnaround time.

6.1.7 INOVATIVE ENGINEERING, GMP, AND BIDS

0-15 Points

The Construction Manager shall demonstrate effective innovative

engineering concepts used to deliver a GMP that maximizes budget and is in close relation to bid pricing. The Construction Manager shall provide history of budget, GMP, and bid price correlation.

No actual bid or project pricing information may be included in any section of the Technical Proposal.

6.2 COPYRIGHTED MATERIAL

Copyrighted material will be accepted as part of a proposal only if accompanied by a waiver that will allow the Department to make paper and electronic copies necessary for the use of Department staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public.

7.0 QUESTION AND ANSWER (Q&A) SESSION

Each shortlisted firm will be required to participate in a Q&A Session. The session will not constitute “discussions” or negotiations. The Construction Manager will not be permitted to ask questions of the Department except for clarification purposes. The following is a list of ground rules for the Q&A Session.

7.1 QUESTIONS

Each Construction Manager will be provided a list of questions to review for five (5) minutes just prior to the start of the Q&A Session. The Construction Manager will remain in the same room as the Technical Review Committee (TRC) and Professional Services Unit (PSU) staff when reviewing the questions. The Construction Manager may not leave the room to review the questions. The five (5) minutes for reviewing questions is not counted as part of the Q&A Session time. Introductions of Construction Manager staff and Department staff are also not counted as part of the Q&A Session time.

7.2 TIME LIMIT

Sessions are limited to forty-five (45) minutes total, inclusive of Construction Manager opening statement, Q&A, follow-up clarifying questions, and Construction Manager closing statement (only if time permits). The PSU shall be the timekeeper, and is responsible for ensuring the Construction Manager firm adheres to the forty-five (45)-minute time limit. Each Construction Manager may make an opening statement of approximately five (5) minutes. The opening statement shall not be separately timed. The session may conclude early if less time is actually required. If time permits, the Construction Manager is allowed five (5) minutes for a closing statement. If the forty-five (45) minutes allocated for the session elapses before the closing statement is made, the Construction Manager is not permitted to give a closing statement.

7.3 FOLLOW-UP QUESTIONS

Follow-up questions may be asked of a given Construction Manager to clarify a Construction Manager’s response to a standard question. Clarifying questions may necessarily vary between Construction Manager firms.

7.4 ATTENDANCE

A maximum of six (6) attendees per Construction Manager firm is permitted. The Department has the discretion to specify persons that should attend from the Construction Manager firms. The Construction Manager's Key Persons are encouraged to attend the Q&A Session.

7.5 PRESENTATION MATERIAL

Firms may bring in note cards or notepads during the interview. Firms are not permitted to share the note cards and notepads with the TRC. No computer or electronic devices are allowed. No handouts or leave-behinds are allowed. The Construction Manager may bring one (1) unaltered aerial plot, 24"x36" maximum, for use during the session. No other visual aids are allowed.

The order in which the Construction Managers will attend will be determined by random drawing at the Question Development Meeting.

7.6 SCHEDULE OF SESSIONS

The Q&A Sessions are scheduled for April 27, 2015, in the Cypress Conference Room of the District Five Office, located at 719 South Woodland Boulevard, Deland, Florida, 32720.

The presentations, drawn randomly by the Procurement Unit, will be in the following order:

| | | |
|--------------------------|--|----------------|
| Q&A Session No. 1 | <u>Ivey's Construction, Inc.</u> | 8:30-9:15 am |
| Debriefing Session No. 1 | | 9:15-10:00 am |
| Q&A Session No. 2 | <u>Charles Perry Partners, Inc.</u> | 10:00-10:45 am |
| Debriefing Session No. 2 | | 10:45-11:30 am |
| Q&A Session No. 3 | <u>Biltmore Construction Co., Inc.</u> | 1:00-1:45 pm |
| Debriefing Session No. 3 | | 1:45-2:30 pm |
| Q&A Session No. 4 | <u>Ajax Building Corporation</u> | 2:30-3:15 pm |
| Debriefing Session No. 4 | | 3:15-4:00 pm |

8.0 DEADLINE FOR QUESTIONS

All technical and administrative questions should be directed to the Department's Bidders Question and Answer site located at: <https://www3b.dot.state.fl.us/BidQuestionsAndAnswers/Proposal.aspx/SearchProposal>.

The Department will respond to questions received up to the date shown in the advertisement. Questions posted to the Bidders Question and Answer site after that date will be responded to at the Department's discretion.

All technical and administrative questions shall be submitted to this site only.

9.0 CONSTRUCTION MANAGER SELECTION

Following the Q&A Sessions, the Selection Committee shall meet, as advertised, to discuss the technical scoring, capabilities, and presentations of the Construction Managers. At the discretion of the Committee, other persons may be requested to provide information at the meeting. The Selection Committee will review the scores and adjust the points as it deems appropriate and determine the intended Award. The Award will become final in accordance with Florida Statutes.

In addition to the TRC presentation evaluation, other items, which the Selection Committee and TRC may consider and weigh during the selection process, are as follows:

- A. ADEQUACY OF MANAGEMENT STAFF
- B. ADEQUACY OF TECHNICAL STAFF
- C. CURRENT OR PROJECTED WORK LOAD
- D. RECENT OR CURRENT EXPERIENCE
- E. PROPOSED OFFICE LOCATIONS
- F. QUALITY CONTROL
- G. UNDERSTANDING OF PROJECT
- H. ADEQUACY OF PROPOSED SCHEDULE (MILESTONES)
- I. STAFFING PLAN
- J. PROPOSED USE OF DBE-CERTIFIED CONTRACTORS
- K. UNIQUE CONCEPTS

Immediately after the selection, the Construction Manager shall be notified of the selection ranking. Notification shall also be published on the Department's internet home page: http://www.dot.state.fl.us/contractsadministrationdistrict5/FCO/FCOContracts_CM@Risk.shtm.

10.0 CONTRACT DISCUSSIONS AND NEGOTIATIONS

Contract discussions shall be initiated with the Construction Manager ranked No. 1 by the Selection Committee. The No. 1 ranked Construction Manager shall attend a Base Contract Clarification Meeting with representatives of the Department to discuss the Base Contract and work effort for the desired services identified herein, and the manpower effort required to accomplish same. The selected Construction Manager's Project Manager will take minutes of the meeting and "red line" the Base Contract in accordance with the discussions. A copy of the minutes will be submitted to the Department's Project Manager and the Department's Contract Administrator. Negotiations will be scheduled upon conclusion of the Base Contract Clarification Meeting. Instructions regarding submittals will be given by the District's Contract Administrator after selection has been made.

Should the Department be unable to successfully negotiate a contract with the No. 1 ranked Construction Manager, the Department shall begin negotiations with the next ranked Construction Manager, who shall then become the No. 1 ranked Construction Manager.

It is anticipated the contract will be executed on or about May 11, 2015.

ACTUAL COMMITMENT AND FINAL EXECUTION OF THIS CONTRACT IS CONTINGENT UPON AN APPROVED LEGISLATIVE BUDGET AND AVAILABILITY OF FUNDS.

11.0 ADDITIONAL REQUIREMENTS

11.1 E-VERIFY

Vendors/Contractors:

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/ Contractor during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

11.2 REVIEW OF PROPOSER'S FACILITIES AND QUALIFICATIONS

After the proposal due date and prior to contract execution, the Department reserves the right to perform or have performed an on-site review of the proposer's facilities and qualifications. This review will serve to verify data and representations submitted by the proposer and may be used to determine whether the proposer has an adequate, qualified, and experienced staff, and can provide overall management facilities. The review may also serve to verify whether the proposer has financial capability adequate to meet the contract requirements.

Should the Department determine that the proposal has material misrepresentations or that the size or nature of the proposer's facilities or the number of experienced personnel (including technical staff) are not adequate to ensure satisfactory contract performance, the Department has the right to reject the proposal.

11.3 SCRUTINIZED COMPANIES LISTS

Section 287.135, Florida Statutes, requires that at the time a company submits a bid or proposal for a contract for goods or services of \$1 million or more, the company must certify that the company is not on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to Section 215.473, Florida Statutes.

Request for Technical Proposal responses of \$1 million or more must include the attached **Scrutinized Companies Lists** form to certify the respondent is not on either of those lists. The form should be submitted with the Price Proposal.

11.4 ADDITIONAL TERMS AND CONDITIONS

No conditions may be applied to any aspect of the Request for Technical Proposal by the proposer. Any conditions placed on any aspect of the proposal documents by the proposer may result in the proposal being rejected as a conditional proposal (see "RESPONSIVENESS OF PROPOSALS"). **DO NOT WRITE IN CHANGES ON ANY REQUEST FOR TECHNICAL PROPOSAL SHEET.** The only recognized changes to the Request for Technical Proposal prior to proposal opening will be a written Addenda issued by the Department.

11.5 RESPONSIVENESS OF PROPOSALS

11.5.1 RESPONSIVENESS OF PROPOSALS

Proposals will not be considered if not received by the Department **on or before** the date and time specified as the due date for submission.

All proposals must be typed or printed in ink. A responsive proposal is an offer to perform the scope of services called for in this Request for Technical Proposal in accordance with all requirements of this Request for Technical Proposal and receiving seventy (70) points or more on the Technical Proposal. Proposals found to be non-responsive shall not be considered. Proposals may be rejected if found to be irregular or not in conformance with the requirements and instructions herein contained. A proposal may be found to be irregular or non-responsive by reasons that include, but are not limited to, failure to utilize or complete prescribed forms, conditional proposals, incomplete proposals, indefinite or ambiguous proposals, and improper and/or undated signatures.

11.5.2 MULTIPLE PROPOSALS

Proposals may be rejected if more than one (1) proposal is received from a proposer. Such duplicate interest may cause the rejection of all proposals in which such proposer has participated. Subcontractors may appear in more than one (1) proposal.

11.5.3 OTHER CONDITIONS

Other conditions which may cause rejection of proposals include, but are not limited to, evidence of collusion among proposers, obvious lack of experience or expertise to perform the required work, failure to perform or meet financial obligations on previous contracts, or in the event an individual, firm, partnership, or corporation is on the General Services Administration Excluded Parties List. Proposers whose proposals, past performance, or current status do not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of the contract may be rejected as non-responsive. The Department reserves the right to determine which proposals meet the requirements of this solicitation, and which proposers are responsive and responsible.

11.6 MAIL OR DELIVER PROPOSAL TO: (DO NOT FAX)

**Florida Department of Transportation
District Five
Attn: Ms. Catrina Wilson
719 South Woodland Boulevard
Deland, Florida 32720
Phone: 386-943-5536**

It is the proposer's responsibility to assure that the proposal (Technical and Price Proposal) is delivered to the proper place **on or before** the proposal due date and time. Proposals, which for any reason are not so delivered, will not be considered.

By submitting a proposal, the proposer represents that it understands and accepts the terms and conditions to be met and the character, quality, and scope of services to be provided.

All proposals and associated forms shall be signed and dated in ink by a duly authorized representative of the proposer.

Each proposer shall fully acquaint itself with the conditions relating to the

performance of the services under the conditions of this Request for Technical Proposal. This may require an on-site observation.

11.7 MODIFICATIONS, RESUBMITTAL, AND WITHDRAWAL

Proposers may modify submitted proposals at any time prior to the proposal due date. Requests for modification of a submitted proposal shall be in writing and must be signed by an authorized signatory of the proposer. Upon receipt and acceptance of such a request, the entire proposal will be returned to the proposer and not considered unless resubmitted by the due date and time. Proposers may also send a change in a sealed envelope to be opened at the same time as the proposal. The Request for Technical Proposal number, due date, and time should appear on the envelope of the modified proposal.

11.8 POSTING OF INTENDED DECISION/AWARD

11.8.1 POSTING DECISION

The Department's decision will be posted on the Florida Department of Transportation website at: http://www.dot.state.fl.us/contractsadministration/district5/FCO/FCOContracts_CM@Risk.shtm under this Request for Technical Proposal number on the date and time in the timeline, and will remain posted for a period of seventy-two (72) hours. Any proposer who is adversely affected by the Department's recommended award or intended decision must file the following with the Department of Transportation, Clerk of Agency Proceedings, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0450:

1. A written notice of protest within seventy-two (72) hours after posting of the Intended Award, (the notice of protest may be faxed to 850-414-5264), and
2. A formal written protest and protest bond in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed. At the time of filing the formal written protest, a bond (a cashier's check or money order may be accepted) payable to the Department must also be submitted in an amount equal to one percent (1%) of the estimated contract amount based on the contract price submitted by the protestor.

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

11.8.2 INABILITY TO POST

If the Department is unable to post as defined above, the Department will notify all proposers by electronic notification on the Florida Vendor Bid System (see special condition 11.8.1, above) or by mail, fax, and/or telephone. The Department will provide notification of any future posting in a timely manner.

11.8.3 REQUEST TO WITHDRAW PROPOSAL

Requests for withdrawal will be considered if received by the Department, in

writing, within seventy-two (72) hours after the Price Proposal opening time and date. Requests received in accordance with this provision will be granted by the Department upon proof of the impossibility to perform based upon obvious error on the part of the proposer.

11.9 AWARD OF THE CONTRACT

The contract will be awarded to the responsible and responsive proposer whose proposal is determined to be the most advantageous to the State. The Department will hold a public meeting of the Selection Committee to review the Technical Proposal scores, Price Proposal scores, and total scores of the proposers. The Selection Committee will adjust the Technical Proposal scores as it deems appropriate. After review and adjustment, if any, the Technical Proposal score will be determined for each responsive proposer. The proposer with the highest technical score will be the apparent winner. If the Department is confronted with identical scoring from multiple proposers, the Department shall determine the order of award in accordance with Rule 60A-1.011, Florida Administrative Code. The final decision will be determined by the Selection Committee. A statement will be placed in the procurement file that explains the basis for proposer selection. The Award will become final in accordance with Florida Statutes.

The Department reserves the right to accept or reject any or all Technical Proposals and Price Proposals received. The Department is not obligated to execute a contract and may terminate this solicitation at any time.

12.0 EXISTING FACILITY

12.1 SITE VISIT

The existing facility is not a public venue and therefore no unauthorized visitors are allowed. Proposers wishing to visit the facility will need to schedule an appointment with one of the two FDOT representatives listed below.

Scott Price – 321-634-6112
Jim Connelly – 321-634-6073
Main Operator – 321-634-610

Site visits must be conducted prior to deadline for questions.

Proposers will not be permitted to meet with any members of the TRC.

ATTACHMENT 1

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

ATTACHMENT 2

CONSTRUCTION MANAGER AFFIDAVIT FORMS

ATTACHMENT 3

FDOT PROCUREMENT FORMS



ADDENDUM NO. 2

ATTACHMENT 1

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

CONTRACT #: E5L23

PROJECT NO: 424014-1-52-01
424014-1-32-01

PROJECT NAME AND LOCATION: COCOA-BREVARD OPERATIONS CENTER
555 Camp Road, Cocoa, Florida.

CONSTRUCTION MANAGER: **CM Manager Name**
Project Manager
Address
City, State, Zip
Phone Number
FED ID: XXXXXXXX

Office Handling Work:
Address
City State, Zip
Phone Number
Fax Number

PROJECT ADMINISTRATOR: **XXXXXXXXXX**
Florida Department of Transportation
District Five
719 South Woodland Boulevard
Deland, Florida 32720

Rick Scott
Governor

Jim Boxold
Secretary, FDOT

TABLE OF CONTENTS

| | <u>Page</u> |
|------------|--|
| Article 1 | The Project Team and Extent of Agreement 1 |
| Article 2 | Construction Manager’s Services 6 |
| Article 3 | Owner’s Responsibilities 29 |
| Article 4 | Performance of Work and Subcontracts 30 |
| Article 5 | Schedule, Time of Commencement, and Substantial Completion 32 |
| Article 6 | Guaranteed Maximum Price for Construction 35 |
| Article 7 | Construction Manager’s Fee 37 |
| Article 8 | Cost of the Project 40 |
| Article 9 | Change in a Project 42 |
| Article 10 | Discounts and Penalties 46 |
| Article 11 | Payments to the Construction Manager 46 |
| Article 12 | Bonds, Insurance, Indemnity, and Waiver of Subrogation 47 |
| Article 13 | Suspension of Work; Termination of the Agreement; Owner’s Right to Perform Construction Manager’s Obligation 50 |
| Article 14 | Assignment and Governing Law 54 |
| Article 15 | Notice of Claim: Waiver of Remedies 55 |
| Article 16 | Miscellaneous 56 |
| Exhibit A | Project Team Assigned Representatives |
| Exhibit B | Project Name and Construction Scope Items |
| Exhibit C | Preconstruction and Construction Phase Personnel |
| Exhibit D | Guaranteed Maximum Price Amendment to the Agreement Between Owner and Construction Manager |
| Exhibit E | Construction Manager Contingency Transfer Authorization |
| Exhibit F | Owner Contingency Transfer Authorization |
| Exhibit G | Forms |
| Exhibit H | Basis of Design |

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made this _____ day of _____, 2015 by and between the Florida Department of Transportation as Owner, and

Contractor's Name
Address
City, State, Zip
Phone Number

FED ID: XXXXXXX

hereinafter called the Construction Manager.

**ARTICLE 1
THE PROJECT TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between itself and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish the skill and judgment reflected in its Technical Proposal and to cooperate with the Project Architect/Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the Project in compliance with the Contract Documents and in the most expeditious and economical manner consistent with the interest of the Owner and in full accordance with applicable federal, state, and local laws and regulations. The funds with which the compensation of the architects, engineers, Construction Managers, etc. will be paid are under the control of the Owner.

- 1.1. The Project Team. The Project Team shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required. The applicable Project Architect/Engineer will provide leadership on all matters relating to design of that Project, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Project Team on all matters relating to construction. The specific representatives of the Project Team are shown in Exhibit A, attached.
- 1.2. This Project consists of the Project identified in Exhibit B. It is the intent of the parties that this Agreement shall cover this Project. Prior to the commencement of Preconstruction Services relating directly to this Project, the Owner, and prior to execution of this Agreement, the Construction Manager shall negotiate a Preconstruction fee and any additional specific conditions relating to the affected Project. The Owner may then issue a notice to proceed for the Project to be covered under the scope of this Agreement. The Project Guaranteed Maximum Price (GMP) shall be determined subsequently and shall set forth the Construction Phase fee as well as any other terms and conditions specific to the Project. The Construction Manager shall not commence any Work with respect to a Project until authorized in writing by the Owner. The Construction Manager shall be responsible for the performance of all duties called for by this Agreement with regard to this project authorized by the Owner to be covered by this Agreement. The services under this Agreement shall be completed when the Construction Manager fully and completely satisfies the requirements of this Agreement.
- 1.3. Extent of Agreement: This Agreement between the Owner and the Construction Manager supersedes any prior negotiations, representations, or agreements.
 - 1.3.1. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager indicating a clear intent to change the terms of this Agreement.

1.3.1.1. Order of Precedence of Contract Documents. In cases of conflict between Contract Documents, the order of precedence of the Contract Documents shall be as follows:

- a. This Agreement.
- b. Technical Specifications, Drawings, and Addenda.

Contract Documents shall be construed in a harmonious manner, whenever possible.

1.3.1.2. The documents included in a Project Agreement shall be considered together, so that any part of the Work shown or described on the plans, though not specifically referred to in the specifications or elsewhere in the documents, and any work described or referenced in the specifications or other document included in the Project Agreement but not shown or described on the plans, shall be executed by Construction Manager as a part of the Project Agreement, as well as any work which, in the opinion of Owner, may be fairly inferred from the specifications, plans, other Contract Documents or by normal industry practice.

1.3.1.3. Detail plans shall take precedence over general plans for the same part of the Work. Specifications and detail plans which may be prepared or approved by Owner after the execution of the Contract and which may be fairly inferred from the original specifications and plans are to be deemed a part of such specifications and plans, and that portion of the Work shown thereby shall be performed without any change in the Contract Price or Construction Schedule.

1.3.1.4. As used in the Contract Documents, (i) the singular shall include the plural, and the masculine shall include the feminine and neutral, as the context requires; (ii) "includes" or "including" shall mean "including, but not limited to"; and (iii) all definitions of agreements shall include all amendments thereto in effect from time to time.

1.4. Term: The term of this agreement begins on the date of this Agreement. Unless otherwise provided for on this Agreement or by subsequent Amendment, the provisions of the Agreement will remain in full force and effect through the completion of all services or nine-hundred and ninety (990) calendar days, commencing from the Owner's Preconstruction Notice to Proceed date, whichever occurs first.

Subsequent to the execution of this Agreement by both parties, the Construction Manager's services will commence upon the Owner's Preconstruction Phase Notice to Proceed for the Preconstruction Phase Work to be completed within 270 calendar days, and if the Owner issues a Notice to Proceed for Construction Phase Work, then the Construction Manager's services for the Construction Phase Work are to be completed within an additional 720 calendar days, from that Notice to Proceed date or by date of termination, whichever occurs first.

1.5. General Warranties. By their execution hereof, Owner and Construction Manager each represent and warrant to the other that they are authorized to enter into this Agreement and that this Agreement represents such Party's legal, valid, and binding obligation, enforceable according to the terms thereof.

1.5.1. Construction Manager covenants, represents, and warrants to Owner that:

1.5.1.1. It is a business organization duly organized, validly existing and in good standing under the laws of the State of Florida, having full power and authority to engage in the business it presently conducts and contemplates conducting, and is and

throughout the Work will be duly licensed or qualified and in good standing under the laws of said jurisdiction;

1.5.1.2. It has the required authority, ability, skills and capacity to perform, and shall perform, the Work in a manner consistent with sound engineering and construction principles, project management and supervisory procedures, and reporting and accounting procedures;

1.5.1.3. The execution, delivery, and performance of this Agreement will not conflict with any applicable laws or with any covenant, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

1.5.1.4. It has knowledge of all the applicable laws in effect on the Effective Date of the Agreement and of all business practices in the jurisdiction within which the Jobsite is located that must be followed in performing the Work.

1.6 Independent Contractor. Construction Manager is an Independent Contractor and is not an agent or employee of Owner or agent in performing the Work. Except as otherwise provided herein, Construction Manager shall maintain complete control over its own employees, agents, and operations and those of its subcontractors, vendors, and their respective employees and agents. Construction Manager hereby accepts complete responsibility as a principal for its agents, subcontractors, vendors, their respective employees, agents, and persons acting for or on their behalf, and all others it hires to perform or assist in performing the Work.

1.7 Definitions: The following terms shall have the meanings specified herein. The definitions included in this Agreement are not exhaustive of all definitions used in this Agreement. Additional terms may be defined in other Contract Documents.

1.7.1. There is no agent assigned for this agreement.

1.7.2. "Base GMP" means that portion of the GMP reflecting the construction cost of the Project and the Construction Manager's Fee under Subarticles 7.1.2 and 7.1.3.

1.7.3. "Contract Modification" means a written order changing the Scope of Work, the Contract Price, the Contract Schedule or any other rights, duties or obligations of the Parties issued to Construction Manager by Owner after the Effective Date of a Project Agreement.

1.7.4. "Construction Contingency" means an agreed upon sum included in a Project GMP for the purpose of defraying the expenses due to unforeseen circumstances relating to construction of that Project. The Construction Contingency for a Project shall include the Construction Manager's Contingency and the Owner's Contingency.

1.7.5. "Construction Documents," as to a Project, means the plans and specifications setting forth in detail the requirements of the construction of that Project, and as further defined by the Architect/Engineers' agreements.

1.7.6. "Construction Manager" means the individual firm, joint venture or other legal entity contracting with the Owner under this Agreement and identified as the Construction Manager.

1.7.7. "Construction Manager's Contingency" means that portion of the GMP available for use by the Construction Manager to defray the increased Cost of a Project due to unforeseen circumstances relating to construction of that Project other than that deemed the responsibility of the Owner pursuant to Article 6.2.2.4.

- 1.7.8. "Construction Schedule" means the detailed working schedule of significant Work activities and intermediate milestones.
- 1.7.9. "Contract Documents" means this Agreement, all Project Agreements, Supplemental Agreements, plans, specifications, and other documents reflecting the terms and conditions for completion of a Project.
- 1.7.10. "Cost of the Project" means the costs necessarily incurred during the Construction Phase of a Project and paid by the Construction Manager, as prescribed by Article 8.
- 1.7.11. "Design Development Documents," as to a Project, means the plans, specifications, and other documents, which fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing and electrical systems, materials, and such other elements as may be appropriate.
- 1.7.12. "Effective Date of this Agreement" means the date of this Agreement.
- 1.7.13. "Estimate" means the Construction Manager's latest estimate of probable project construction cost with respect to a Project.
- 1.7.14. "Final Acceptance" means satisfaction of all the conditions set forth in Article 5.6.
- 1.7.15. "Final Acceptance Date" means the date on which Final Acceptance of the Work is declared by Owner to have occurred.
- 1.7.16. "Final Completion" means satisfaction of all conditions set forth in Article 5.5.
- 1.7.17. "Final Completion Date" means the date on which Final Completion is declared by Owner to have occurred.
- 1.7.18. "Final Inspection" means inspection of the Work by Owner and Construction Manager pursuant to Article 5.
- 1.7.19. "GMP" means the Guaranteed Maximum Price, a sum certain set forth in a Project Agreement as the total Cost of the Project that the Construction Manager agrees will not be exceeded, as well as the Construction Manager's fees, the Construction Manager's Contingency, and the Owner's Contingency.
- 1.7.20. "Hazardous Materials" means any hazardous materials or hazardous substances as defined in the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA) as the same may be amended from time to time, or any "hazardous material" or "hazardous substance" as defined in any applicable federal or state statute or regulation or local law.
- 1.7.21. "Jobsite" means those areas of the site upon which the Project will be constructed designated in writing by Construction Manager for performance of the Work and such additional areas as may, from time to time, be designated in writing by Construction Manager for Subcontractor's use hereunder.
- 1.7.22. "Mechanical Completion" means satisfaction of all the conditions set forth in Article 5.3.
- 1.7.23. "Notice to Proceed" means a Notice issued by Owner to Construction Manager, or by Construction Manager to a subcontractor directing to commence or proceed with the Work
- 1.7.24. "Notice to Proceed Date" means the date on which the Notice to Proceed is issued to Construction Manager, or the date stated in the Notice to Proceed as being the Notice to Proceed Date, whichever is latest.

- 1.7.25. "Owner" means the Florida Department of Transportation (FDOT).
- 1.7.26. "Owner's Construction Budget" means Owner's funds budgeted and requested for construction of the Project. The Owner's Construction Budget is \$15,000,000, including all Construction Manager fees, costs of the Work, and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 7 and 8. This acknowledgement of the Owner's budgeted funds is not to be construed as the Construction Manager's GMP. A GMP will be offered for the Project by separate documentation as outlined in Article 6.
- 1.7.27. "Owner's Contingency" means that portion of the GMP, which is available for use at the Owner's discretion to defray additional expenses relative to construction of a project, as well as additional expenses deemed the responsibility of the Owner pursuant to Article 6.2.2.4.
- 1.7.28. "Pre-Commissioning" means non-operating activities performed on equipment systems after installation including, but not limited to, removal of rust preventives; changing of lubricants, chemicals, and supplies; checking motor rotation and machine alignment; checking of proper valve actuation; removal of temporary bracing, pressure, and leak testing; safety valve testing and adjustment; checking electrical connections; performing continuity tests; and any other activities which are evidently necessary by virtue of the nature of the Work in order that all systems are functioning properly and safely during the Commissioning phase of the Project.
- 1.7.29. "Project" means the total potential Work to be performed under this Agreement.
- 1.7.30. "Project Team" means the Construction Manager, the Owner, the Project Administrator, and the Architect/Engineer.
- 1.7.31. "Project Manager" means the Project Manager for the CM@Risk Contractor.
- 1.7.32. "Project Administrator" means FDOT Project Administrator.
- 1.7.33. "Project Agreement" means the complete set of project documents that reflects the agreed terms and conditions under which Construction Manager will construct a particular project. Project Agreements will be generally titled "E5L23."
- 1.7.34. "Project Cost Savings" means that portion of the GMP, excluding unused Construction Manager's Contingency and the unused Owner's Contingency, which exceeds the total actual Cost of a Project, as defined under Article 8.
- 1.7.35. "Punch List" means the list prepared by Construction Manager identifying matters that remain to be completed between achievement of Mechanical Completion and Substantial Completion and between achievement of Substantial Completion and Final Completion in order that Substantial Completion and Final Completion can be declared by Owner to have occurred.
- 1.7.36. "Schematic Design Documents" means plans and other documents illustrating the scale and relationship of the Project and as further defined by the Project Administrator's agreement.
- 1.7.37. "Qualifications Experience Questionnaire" means the qualifications experience questionnaire submitted by the Construction Manager during the selection process, including those items describing the Construction Manager's capabilities and proposed approach to the Project.

- 1.7.38. "Shop Plans" means plans, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by Construction Manager or any of its Subcontractors or Vendors, and which illustrate how specific portions of the Work will be fabricated or installed.
- 1.7.39. "Substantial Completion" means satisfaction of all the conditions set forth in Article 5.4.
- 1.7.40. "Substantial Completion Date" means the date on which Substantial Completion of the Work is declared by Owner to have occurred.
- 1.7.41. "Unforeseen Circumstances" means circumstances that were not reasonably foreseeable by the Construction Manager at the time of acceptance of a Project GMP, not reasonably avoidable at the time of discovery and not attributable to noncompliance with contract terms by the Construction Manager or its subcontractors or suppliers.
- 1.7.42. "Vendor or Supplier" means any person who supplies machinery, equipment, materials, consumables, support services, utilities, etc. to Construction Manager or to any Subcontractor in connection with the performance of Construction Manager's obligations under the Contract, but who does not perform labor at the Jobsite.
- 1.7.43. "Work" means all work conducted by Construction Manager or subcontractor pursuant to, and to the extent required by, the terms of this Agreement and all Project Agreements, including without limitation, engineering and design, procurement, manufacture, construction and erection, installation, training, Plant Start Up (including calibration, inspection and operation), and testing operation with respect to the Facility to be performed by Construction Manager, and all other services, equipment and materials necessary for Construction Manager to achieve the Performance Guaranties, if any, and Final Acceptance in accordance with the Agreement. Work also includes, but is not limited to, all or portions of the Facility, including without limitation, labor, materials, equipment, services, and any other items to be used by Construction Manager or its Subcontractors or Vendors in the prosecution of this Agreement, wherever the same are being engineered, designed, procured, manufactured, delivered, constructed, installed, trained, erected, tested, started up, or operated during start-up and testing and whether the same are on or off the Jobsite.
- 1.9 The parties acknowledge that the progress of the Project is subject to the continued participation and cooperation of third parties, which can affect both the availability and timing of funding, as well as critical path activities involving the design and construction of projects that are outside of this Agreement, but affect this Project. Accordingly, there is no representation by Owner that the amount, timing, or sequence of the work under this Project will occur as anticipated. Construction Manager will have no claim for delay in initiating work under the Project.

ARTICLE 2 CONSTRUCTION MANAGER'S SERVICES

The Construction Manager's services shall be those necessary and appropriate to the successful completion of the Project in a timely and cost-effective manner and shall include, but are not limited to, those described or specified herein. The Construction Manager shall provide all requested services according to the capabilities reflected in its Qualifications Experience Questionnaire. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Unless otherwise provided in this Agreement, or as agreed in writing between Owner and Construction Manager, the form and content of all systems, reports, forms and regular submittals by Construction Manager to Owner shall be subject to Owner's prior approval, and Construction Manager shall submit such materials to Owner for approval prior to implementation. Owner's approval thereof shall not limit Owner's right to thereafter require reasonable changes or additions to approved systems, reports, forms,

and regular submittals by Construction Manager to Owner. Except as to shop plans and other design work performed by Construction Manager, its subcontractors or agents pursuant to this Agreement, Construction Manager's services hereunder are not intended to include the performance of design work and Construction Manager does not assume any responsibility for the design of any work.

2.1. General Services

2.1.1. Project Management Information System (PMIS)

2.1.1.1. Commencing immediately after the Effective Date of this Agreement, the Construction Manager shall implement and utilize throughout the life of this Agreement the PMIS as described herein or modified by mutual agreement.

2.1.1.2. The reports, documents, and data to be provided under the PMIS shall represent at all times an accurate assessment of the current status of the Project and work remaining to be accomplished. Furthermore, the PMIS shall provide a sound basis for identifying variances and problems and shall serve as a resource for making management decisions. Utilizing computerized systems, reports shall be prepared and furnished to the members of the Project Team monthly. Data within the PMIS shall be accessible electronically (via website) by the members of the Project Team and sent as requested to Project Team.

2.1.1.3. If requested by the Project Administrator, the Construction Manager shall conduct a comprehensive workshop in Cocoa for participants designated by the Project Administrator and additional seminars as required to provide instruction to members of the Project Team to facilitate each participant's use and understanding of the PMIS. Furthermore, the workshop shall emphasize function and organization of the PMIS during the design and construction of the Project; and shall establish, with the full concurrence of the Project Team, procedures for accomplishing the management control aspect of the Project. All information conveyed in the instruction workshop shall have the full concurrence of the Project Administrator.

2.1.1.4. The PMIS shall include the following major elements:

- a. Narrative Reports,
- b. Schedule Control,
- c. Cost Control and Estimating,
- d. Project Accounting,
- e. Accounting and Payment,
- f. Action Reports, and
- g. Critical Issues Look Ahead.

All elements shall be maintained electronically, a portion of which will be accessible (via website) by the members of the Project Team.

2.1.2. Narrative Reporting

2.1.2.1. The Construction Manager shall prepare monthly written reports as described hereunder. All written reports shall be in 8-1/2" x 11" format. The Construction Manager shall ensure that each member of the Project Team is provided a copy.

2.1.2.2. The Narrative Reporting Subsystem shall include the following reports:

- a. A Monthly Executive Summary which provides an overview of the Project's progress, current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
- b. A Monthly Cost Narrative describing the current construction cost estimate status of the overall Project. Specific attention to contract modification/ Work Order status (i.e., amount, reason for change, responsibility) claim status or potential claims shall be addressed in detail.
- c. A Monthly Scheduling Narrative summarizing the current status of the overall Project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.
- d. A Monthly Accounting Narrative describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
- e. A Monthly Construction Progress Report during the Construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly Jobsite meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, Project permits, construction problems and recommendations, and plans for the succeeding month.
- f. A Daily Construction Diary during the Construction phase describing events and conditions on the site. The diary shall be maintained at the site available to members of the Project Team. A bound copy of the complete diary shall be submitted to the Owner at the conclusion of the Project.
- g. A monthly Disadvantaged Business Enterprise and Minority Business Enterprise participation report during the Construction Phase summarizing the participation of certified disadvantaged and minority subcontractors/ material suppliers for the current month, and project to date in the form prescribed by the Project Administrator.

2.1.2.3. The written reports outlined in subarticle 2.1.2.2(a) through (g) above shall be bound with applicable computer reports and submitted during design. Reports will be submitted at each milestone during the Preconstruction Phase and monthly during the Construction phase. Copies shall be transmitted to the members of the Project Team and others designated by the Project Administrator with the monthly pay requisition. Additional copies of the report outlined in subarticle 2.1.2.2(a) shall be bound separately and distributed monthly as directed by the Project Administrator. Certain electronic copies of reports shall be transmitted electronically to the Project Administrator and other designated by the Project Administrator, as required.

2.1.3. Schedule Control

- 2.1.3.1. Master Project Schedule. Within forty-five (45) days after the effective date of this Agreement, the Construction Manager shall develop and submit a master schedule covering the planning and design approvals, construction and Owner occupancy of the Project. The Construction Manager shall also develop and submit a master project schedule for the Project. This schedule will serve as the framework for the subsequent development of all detailed schedules. The master schedule shall be produced and updated monthly throughout the Project. A final master project schedule shall be submitted to the Owner at the time of the submission of a Project GMP. Once accepted by the Owner, the applicable master project schedule will be the basis for payment to the Construction Manager for Construction Phase services for a Project and will also serve to determine the impact of all proposed changes on a Project and the Project as a whole.
- 2.1.3.2. Construction Schedule. Within thirty (30) days after the date of the Owner's execution of a Project GMP, the Construction Manager shall prepare and submit to the Project Team a construction schedule, consistent with the Master Schedule, graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete this project, and showing the sequence in which the Construction Manager proposes for each such activity to occur and duration (dates of commencement and completion, respectively) of each such activity.
- 2.1.3.3. Following development and submittal of the construction schedules described above, the Construction Manager shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete this project, or at such earlier intervals as circumstances may require, update and/or revise this Project construction schedule to show the actual progress of the work performed, variance from scheduled completion dates, the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule, and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. The Construction Manager shall also provide a short-term, look-ahead schedule and a summary schedule for this Project. Each such update and/or revision to a construction schedule for a Project and the overall Project shall be submitted to the Project Administrator and shall be available electronically to all members of the Project Team. The Construction Manager shall make recommendations to the Project Administrator in order to meet the milestone dates of the master schedule.
- 2.1.3.4. The Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules for this Project:
 - a. Pre-Bid Schedules. The Construction Manager shall prepare a construction schedule for work encompassed in each bid scope. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid scope as a framework for contract completion by the successful bidder, shall show the interrelationships between the work of the successful bidder and that of other subcontractors for the applicable project, and shall establish milestones keyed to the applicable master project schedule.
 - b. Subcontractor Construction Schedules. Upon the award of each subcontract, the Construction Manager shall jointly with the subcontractor, develop a

schedule that is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The subcontractor construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop plan schedules, and material delivery schedules. All subcontractor schedules shall be integrated into, made a part of and conform to the master project schedule.

- c. **Occupancy Schedule.** The Construction Manager shall jointly develop with the Project Team a detailed occupancy schedule plan, inclusive of substantial completion inspections, completion of punch lists, final inspections, maintenance training and turn-over procedures. The plan shall be used to ensure accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final occupancy of the Project.

2.1.4. Cost Control

- 2.1.4.1. The Construction Manager shall provide sufficient timely written detail in monthly Cost Control reports for the Project to permit the Project Team to control and adjust Project requirements, needs, materials, equipment and systems by building and site elements so that construction for the Project will be completed at a cost that will not exceed the maximum total Project budget.

2.1.5. Project Accounting

- 2.1.5.1. The Construction Manager shall utilize its standard accounting system that will enable the Project Team to plan effectively and to monitor and control for the Project the funds available, cash flow, costs, contract modifications, payments, and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, and amounts payable. The Project accounting system utilized by Construction Manager will serve as a basic accounting tool and an audit trail. The Construction Manager will retain all Project files in a manner consistent with proper accounting procedures that are sufficient for an audit by the Owner for a period of 5 years after final completion of the Project. The Project accounting system will include the following reports:
 - a. **Cost Status Report** presenting the budget, estimate, and baseline costs (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved contract modifications for each subcontract that, when added to the base-line costs, will become the revised costs. Pending contract modifications will also be specifically identified and incorporated into the Cost Status Report to illustrate the total estimated probable cost to complete the Project.
 - b. **Payment Status Report** showing the value in place (both current and cumulative), the amount invoiced to Construction Manager (both current and cumulative), the amount paid by the Construction Manager to date, the retainage, the amount payable (both current and cumulative), and the balance remaining. A summary of this report shall accompany each pay request.
 - c. **Detailed Status Report** showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate and base-line costs figures for each subcontract. It shall give the contract

modification history including contract modification numbers, description, proposed and approved dates, the proposed and approved dollar amounts, and detailed reasons for the contract modification, and parties responsible. It shall also show all pending or rejected contract modifications. The payment history shall include the date, value-in-place, retainage, and accounts payable.

- d. Cash Flow Diagram showing the projected accumulation of cash payments by the Construction Manager against the applicable Project Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments. This report shall be provided only if required by Owner or Project Administrator.
- e. Job Ledger shall be maintained as necessary to supplement the operation of the Project accounting system. The job ledger will be used for this Project to provide construction cost accountability for general conditions work, on-site reimbursable expenses, and costs requiring accounting needs.
- f. Report on Construction Contingency, reconciling the Construction Contingency to the GMP, showing the initial amount in both the construction Manager's Contingency and the Owner's Contingency, along with an itemization of expenditures charged to the respective contingencies.

2.1.6. Project Manual/Management Plans

2.1.6.1. Within sixty (60) days of the effective date of this Agreement, the Construction Manager shall develop, in conjunction with the Project Team, comprehensive Project management plans describing the services set forth in this Agreement and document such plans in a Project Manual. The Construction Manager shall provide a plan collectively for the Project and for each individual Project, where appropriate, for the control, direction, coordination, and evaluation of work performed by members of the Project Team throughout the Project organization, including identification of key personnel, responsibilities, work flow diagrams, and strategy for bidding the work. The Project management plans shall be updated as necessary throughout the design, construction, and Owner occupancy phases with any such updates. The Project Manual shall be available electronically to the members of the Project Team. In addition, five (5) copies of the Project Manual and any updates shall be submitted to the Project Administrator.

2.1.6.2. Contents of Project Manual. The Project Manual shall describe in detail the procedures for executing the Work and the organizations participating in the Project. The Project Manual shall serve as a Project management plan, and shall include as a minimum the following:

- a. Project and Project Definition. The known characteristics of the Project shall be described in general terms that will provide the participants a basic understanding of the Project.
- b. Project and Project Goals. A description of the goals and objectives for the Project including a general discussion of schedule, budget, physical, technical, and other objectives.
- c. Project and Project Strategy. A narrative description of the project delivery methods to be utilized to accomplish the Project and Project goals.

- d. Project and Project Work Plan. A matrix display of the work to be performed by the each member of the Project Team during each phase of the Project.
- e. Project Organization. A summary organization chart showing the interrelationships between the members of the Project Team, other supporting organizations, and permitting review agencies. Detailed charts showing organizational elements participating in this project shall be included for each member of the Project Team.
- f. Responsibility Performance Chart. A detailed matrix showing the specific responsibilities and interrelationships of the Project Team. The responsibility performance chart shall indicate primary and secondary responsibility for each specific task required to deliver this Project. The Construction Manager shall develop a similar chart for the personnel within its own organization who are assigned to the project, and for the personnel of the members of the Project Team from data supplied by each.
- g. Flow Diagrams. Charts displaying the flow of information and the decision process for the review and approval of shop plans and submittals, progress and contract modifications.
- h. Communication Procedures. The Construction Manager shall establish written procedures for communications and coordination required between Project Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews, and other necessary communications. The Construction Manager shall use electronic communication whenever possible.
- i. Safety Plan. The Construction Manager shall develop a comprehensive safety program for the Project to meet all applicable federal, state and local safety requirements including provisions to be included in the Contract Documents. This will include an aggressive program for ensuring safety of all persons and property affected by the Work.
- j. Quality Control Plan. The Construction Manager shall develop and maintain an effective quality control plan and procedures to assure that materials furnished and quality of work performed are in accordance with the Construction Documents and the Standard Specifications for Road and Bridge Construction (2015), Section 105, and all modifications made thereto.
- k. Crisis Management Plan. The Construction Manager shall develop a crisis management plan describing a general approach to and contacts in case of crisis situations, e.g., hurricane, riot, etc. that permits, to the fullest extent possible, uninterrupted work or prompt resumption of the work.
- l. Labor Relations Plan. The Construction Manager shall develop, in consultation with the Project Team, an approach to labor relations for the Project that assures, to the fullest extent possible, the uninterrupted completion of the Project in accordance with the schedule and budget.
- m. Security Plan. The Construction Manager shall develop and maintain a comprehensive plan to protect the Project sites and materials stored off-site against theft, vandalism, fire, and accidents, etc., as required by job and location conditions. Mobile equipment and operable equipment at the site,

and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.

- n. Disadvantaged/Minority Business Enterprise Participation Plan. The Construction Manager shall develop an implementation plan for the Disadvantaged/Minority Business Enterprise (DBE/MBE) Participation Plan as proposed in the Construction Manager's Technical Proposal. The Construction Manager shall provide to the DBE/MBE office(s), reports and other pertinent information, as required.
- o. Commissioning Plan. The Construction Manager, in coordination with the Project Team, shall develop a commissioning plan that will be implemented during the design and Construction Phase which will provide a smooth and successful Owner occupancy of the Project. The purpose of the commissioning plan is to ensure that building systems perform interactively according to the design intent and the Owner's operational needs. Specific objectives include:
 - i. Applicable equipment/systems are installed properly and receive adequate operational checkout by installing subcontractors;
 - ii. Verification and documentation of proper performance for installed equipment and systems;
 - iii. Verification that the design intent is being met continually;
 - iv. Documentation that operations and maintenance plans left on site are complete;
 - v. Documentation that the Owner's operating personnel are adequately trained;
 - vi. Documentation that record plans are accurately prepared during the construction of the Project;
 - vii. Interaction with permitting authorities to facilitate the issuance of a Certificate of Occupancy; and
 - viii. Review of Contract Documents for warranty effective dates to coincide with the issuance of a Certificate of Occupancy for the Project.
- p. Market Analysis and Bidders Plan. Within sixty (60) days after the effective date of this Agreement, the Construction Manager shall submit a written "Construction Market Analysis and Prospective Bidders Report" reporting on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surpluses of labor or material, setting out recommendations and providing information as to prospective bidders for the Project. The Construction Manager shall develop a plan for stimulating interest of qualified contractors in bidding on the work and familiarizing those potential bidders with the requirements of the Project.
- q. Maintenance of Traffic and Jobsite Logistics. The Construction Manager shall prepare, based on the Project-wide maintenance of traffic plan prepared by the Project Architect/Engineer, a logistics, access staging, and maintenance of traffic plan for this Project. The plans shall contain specific

procedures for minimizing the disruption of surrounding operations and inconvenience to the public accessing the project site(s). The plan shall include plans and other documents illustrating the scale and relationship of Project components based on current and future requirements, construction schedule and construction budget requirements. The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced.

2.2. Construction Manager's Staff

For each phase of services and for this project the Construction Manager is to perform hereunder, the Construction Manager shall maintain competent staff in all positions. The Construction Manager shall submit a staffing plan for each phase. The staffing plan shall detail the Construction Manager's organization for all applicable work levels, including the superintendent level and on-site and off-site personnel. The personnel presented in the Contractor's Experience Questionnaire and Financial Statement shall staff key positions. For all other positions listed in the staffing plan, if applicable, the Construction Manager shall provide resumes to the Project Administrator of the persons being proposed to staff those positions. The Owner reserves the right to disapprove any person proposed, and the Construction Manager shall offer substitutes therefore. It is expressly understood that failure of the Owner to disapprove a person does not confer the Owner's approval of such person. At any time, the Owner/Project Administrator has the reasonable right to request removal and replacement of any Construction Manager's personnel. Once in place, the Construction Manager shall not change any person filling a position listed in the organizational charts without the prior consent of the Owner/Project Administrator unless the Owner requests it or unless the person is leaving the employment of the Construction Manager.

2.3. Jobsite Facilities

The Construction Manager shall arrange for all job-site facilities at this Project site as necessary to execute the requirements of this Project and at a minimum, the items listed below.

The Construction Manager shall retain ownership of all materials removed from the Jobsite unless specifically identified in other Contract Documents.

Construction Facilities

2.3.1. Sanitary Provisions. The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees, subcontractors, and agents as may be necessary to comply with regulations of the County or the Department of Health and Rehabilitative Services. No nuisance will be permitted.

2.3.2. Temporary Wiring. The Contractor shall meet all safety requirements of the National Electric Code, Florida Department of Commerce, Bureau of Workers Compensation, or local requirements. In addition, all wire shall be so sized that it is not over loaded according to the National Electric Code, and any wire used shall be fused to adequately protect that wire according to the National Electric Code.

The Contractor shall have available an adequate number of outlets and each outlet shall be properly and clearly labeled with the maximum voltage and fuse protection. Where temporary lighting is used, outlets shall consist of weatherproof sockets insulated and provided with a locking type wire guard. All devices shall be properly grounded.

- 2.3.3. Storage and Work Areas. At the start of the operations, the Contractor shall make arrangements with the Architect/Engineer's field representative and the Owner's representative for the assignment of storage and work areas. During construction the Contractor shall maintain the areas in a neat condition.
- 2.3.4. Contractor Field Offices. Trailers may be used for field offices, but their use as living quarters for personnel shall be limited to one staff member such as a night watchman or a superintendent.
- 2.3.5. Underground Utilities. The Contractor shall meet all requirements of the United States Department of Labor Occupational Safety and Health Administration (OSHA) in the performance of work related to excavations for underground utilities, foundations and other subsurface work. The Contractor shall conduct thorough training on OSHA standards and requirements on a continuing and regular basis throughout the execution of such work.
- 2.3.6. Water. The Contractor shall furnish and pay for all water necessary for construction of the building and testing its plumbing and mechanical systems. The Contractor shall make all connections, install a meter, take out and pay for all permits necessary, do all piping, and clear away all evidence of the same after the job is completed.
- 2.3.7. Electricity. The Contractor shall provide and pay for electricity for light and power necessary for the construction of the building and testing of its electrical and mechanical systems. The Contractor shall make all necessary arrangements for this service and perform the work required.
- 2.3.8. Site Security. The Contractor shall pay for and be responsible for securing the site and the project against theft, vandalism, and fire, and to ensure public safety at all times (twenty-four (24) hours per day) from the issuance of the Notice to Proceed until Substantial Completion.
- 2.3.9. Owner's Field Office. The Contractor shall provide and maintain a watertight office at the project for the exclusive use of the Architect/Engineer and representatives, not less than 12'x12' in size, one room with at least one (1) window in each exterior wall, and an independent outside entrance door fitted with hardware and lock, artificial light, a bench with one drawer, a blueprint rack, a heater, and a window air conditioner. Upon completion of the Contract, this office and equipment shall become the property of the Contractor, who shall be responsible for removal and disposal of the office and equipment.
- 2.3.10. Telephone. A telephone shall be installed and remain activated in the Architect/Engineer's office until project is fully completed. Charges for long-distance calls shall be paid by the person making the calls, and all other charges in connection with the telephone shall be paid by the Contractor.
- 2.3.11. Project Sign. The Contractor shall erect a 3/4" - 4'x8' exterior-grade plywood sign mounted on 4'x4' pressure treated wood posts at the project site in a prominent location approved by the Owner.
- 2.4. Administrative Records

The Construction Manager will maintain at the job site, unless agreed to otherwise by the Project Administrator, on a current basis, files and records such as, but not limited to the following:

- Punch Lists
- Cost Proposal Requests
- Bid Analysis/Negotiations/Award Information Contracts/Purchase Orders w/changes
- Material/Equipment

- Delivery Logs
- Payment Records
- Transmittal Records
- Inspection Reports
- PMIS Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements
- EEO/Davis Bacon Reports
- DBE/MBE Reports
 - With Payment Records
- Shop Plan Submittal/Approval Logs
- Contract Plans and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records:
 - Labor Costs
 - Material Costs
 - Equipment Costs
- Payment Record Requests
- Subcontractor Pay Exception Report
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Technical Standards
- Design Handbooks
- “As-Built” Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Project Manual

Certain administrative records, as required, shall be available to the members of the Project Team for reference or review.

2.5. Preconstruction Services

In addition to any other services to be performed during the Preconstruction Phase Services as may be specified elsewhere in this Agreement, the Construction Manager shall perform the following Preconstruction Phase Services:

2.5.1. Preliminary Evaluation

The Construction Manager shall provide a preliminary evaluation of the Owner’s Project and construction budget requirements, including a review of all background data made available by Owner as to requirements, criteria, priorities, feasibility, and physical and financial limitations with regard to the Project. The Construction Manager shall become thoroughly familiar with the site and conditions surrounding the site and document the conditions observed on the site with photos or videos as required by the Owner/Project Administrator. The Construction Manager shall review with Project Administrator and Project

Architect/Engineer site data such as access, location of services, security, surveys, soils information, and other relevant information. The Construction Manager shall be responsible for the proper identification and location of all utilities, services and other underground facilities that may impact the Project, but does not assume liability for damage to facilities which are not properly identified by the owner thereof, or its agent. The Construction Manager shall participate in a kick-off meeting with Project Team to establish rapport and develop a common appreciation of the goals of the Project.

2.5.2. Design Review and Recommendations

2.5.2.1. Review and Recommendations

- a. The Construction Manager, as part of its Preconstruction Phase Services, shall follow the development of design through final Construction Documents, reviewing the in-progress Schematic Design Documents and Design Development Documents, and familiarize itself thoroughly with the evolving architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications. The Construction Manager shall analyze the design for constructability, including construction feasibility and practicality, and alternative materials/methods. The Construction Manager shall assist and advise the Project Team in exploring alternative approaches, materials, and systems including value engineering. Upon request, the Construction Manager shall assist Owner and Project Architect/Engineer in preparing comparative life-cycle studies of ownership, operating, and maintenance costs for each schematic design alternative considering costs relating to efficiency, usable life, maintenance, energy, and operation.
- b. The Construction Manager shall continuously monitor the impact of proposed design on Project schedule and recommend adjustments in the design documents or construction bid packaging to ensure completion of the Project in the most expeditious manner possible.
- c. The Construction Manager shall advise and assist the Project Architect/Engineer, and represent Owner, if requested, in dealing appropriately with all applicable laws and with local utilities, communications, and other related infrastructure issues, as necessary.

2.5.2.2. Preliminary Estimates

- a. **Cost Model:** The Construction Manager shall prepare a cost model using industry standard cost estimating software and as approved by the Owner, for estimating project costs and provide a copy of such model to the Project Administrator within forty-five (45) days after the effective date of this Agreement. Such cost model shall serve as a basis for all estimates for the program including the development of GMP.
- b. **Initial Project Estimate.** The Construction Manager shall prepare an Estimate for the Project within forty-five (45) days after the effective date of this Agreement.
- c. **Project Estimate Updates.** The Construction Manager shall prepare several levels of budgeting, estimating and pricing appropriate to each level of design. The Construction Manager shall continue to refine cost estimates as each project progresses through the design phases with input to the Project Team on clarifications needed to reduce allowances for contingencies.

The Construction Manager shall continue to review and refine the estimate as construction documents are prepared for this project and advise the Project Team immediately if it appears that the program or any project cannot be completed within the budget or schedule.

- d. Construction Document Estimates. During the bid phase, when the Construction Document working plans and specifications are complete, the Construction Manager shall prepare and submit at the time of GMP a cost estimate on the basis of a quantitative material take-off with current local cost for each bid group by subcontract package. Such cost estimate shall remain confidential and exempt from inspection under Section 119.07(1), Florida Statutes, to the extent permitted by law, until bids or proposals received by Construction Manager are opened.

With the updated estimates, the Construction Manager shall submit a report of line item variances from the previous estimate with information describing the basis for each variance. Formal design reviews with the Project Administrator will be scheduled at the indicated completion milestones.

- 2.5.2.3. Review Reports and Warranty. Within forty-five (45) days after receiving the Construction Documents for this Project, the Construction Manager shall perform a specific review thereof, focused upon construction feasibility and practicality and apparent defects. Promptly after completion of the review, the Construction Manager shall submit to the Project Administrator and the Project Architect/Engineer a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations, as it may deem appropriate, and all actions taken by the Project Architect/Engineer with respect to same, any comments it may deem to be appropriate with respect to separating the work into separate subcontracts, alternative materials, and all comments called for herein.

At completion of the Construction Manager's review of the Construction Document plans and specifications for a project, except only as to specific matters as may be identified by appropriate comments pursuant to this article, the Construction Manager shall warrant, without assuming any architectural or engineering responsibility, that the plans and specifications are consistent, practical, feasible, and constructible. Construction Manager shall warrant that the Work described in the plans and specifications for the various bidding packages of the project is constructible within the scheduled construction time.

Disclaimer of Warranty: The Owner disclaims any warranty that the plans and specifications for any project are accurate, practical, consistent, or constructible. Owner's review and/or approval of the plans and specifications shall in no way diminish or release the warranty of adequacy and fitness for intended purposes.

2.6. Procurement Planning

- 2.6.1. Long Lead Procurements. The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies) for this Project. When each item is identified, the Construction Manager shall notify the Project Team of the required procurement and schedule. Such information shall be included in the bid documents and be made a part of all affected subcontracts. As soon as the Project Architect/Engineer has completed plans and technical specifications and the Construction Manager has obtained permitting approval, the Construction Manager shall arrange for procurement of such long-lead items, as authorized by Owner. The Construction Manager shall keep informed of the progress of the respective subcontractors or suppliers,

manufacturing or fabricating such items and advise the Project Administrator, of any problems or prospective delay in delivery. When such items are to be fabricated and partially or totally paid for by the Owner prior to the arrival of such items at the site, the Construction Manager shall require the assembler or manufacturer to provide a Uniform Commercial Code (UCC) Form No. 1, clearly establishing that the Owner has rights and privileges with regard to the item that has been paid for.

- 2.6.2. Separate Subcontracts Planning. The Construction Manager shall review the design and phasing plans for this project with the Project Architect/Engineer and make recommendations in writing to the Project Team with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction subcontracts on the current schedule while the design is being completed. The evaluation shall speak to the benefits of the speed of erection and early completion of the Project overall. The Construction Manager shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner/Project Administrator.
- 2.6.3. Interfacing. The Construction Manager shall review the design documents for clarity, consistency and coordination of documentation, and call to the Project Team's attention any apparent ambiguities or defects in the design, plans and specifications or other documents, use of illegal or restrictive requirements, overlap with any separate construction trade contracts, omissions, lack of correlation between plans and any other deficiencies noted in order that the Project Administrator and Project Architect/Engineer may arrange for necessary corrections. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements for the Project will be covered in the separate subcontracts for procurement of long lead items, and that the separate construction subcontracts will be without duplication or overlap, and will be sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid scope clearly identifies the work included in that particular separate subcontract, its schedule for start and completion, and its relationship to other separate contractors.
- 2.6.4. Warranties: The Construction Manager shall review the Contract Documents to ensure that warranty effective dates coincide with the issuance of a Certificate of Occupancy for the Project.
- 2.6.5. Stimulation of Bidder Interest. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project. As various bid scopes are prepared for bidding, the Construction Manager shall submit to the Project Team a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local, regional, and national marketplace, and to identify and encourage bidding competition.
- 2.6.6. Preparation of GMP. When the Construction Documents for a Project are 100% complete to establish the work for the Project or any portion thereof, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for its approval a GMP proposal for the Project, guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. Such GMP will be subject to modification for changes in the project as provided in Article 9. However, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs, and direct job costs as defined under Article 8, plus the Construction Manager's fees or the GMP, whichever is less when the work is complete; provided; however, that Construction Manager shall also share in the "Project Cost Savings," as provided in this Agreement.

2.6.6.1. The GMP proposal for the Project shall include three (3) sets of signed, sealed, and dated plans, specifications and other documents upon which the GMP is based from the Project Architect/Engineer, and shall acknowledge on the face of each document of each set that it is the set upon which the Construction Manager based its GMP. The Construction Manager shall send one (1) set of the documents to the Project Administrator along with its GMP proposal, while keeping one (1) set for itself, and returning one (1) set to the Project Architect/Engineer. The GMP proposal shall include the following sections:

| | |
|----------------|---|
| Section One: | Summary of Work |
| Section Two: | GMP Price Summary |
| Section Three: | Scope Clarifications and Assumptions |
| Section Four: | Detailed Estimate |
| Section Five: | Bid Tabulations, where applicable |
| Section Six: | Preliminary Construction Schedule |
| Section Seven: | Contract Documents - Plan List and Specification List |

2.7. Construction Phase

In addition to any other services to be performed during the Construction Phase, as may be specified elsewhere in this Agreement, the Construction Manager shall do the following:

- 2.7.1. Construction Manager's Staff. The Construction Manager shall maintain at the Project site sufficient off-site support staff and competent full time staff who are authorized to act on behalf of the Construction Manager to provide continuous on-site monitoring and coordination, inspection and general direction of the work on the Project and progress of the subcontractors. Construction Manager shall not transfer or move either its Project Manager or any of his supervisory staff or Key Personnel assigned to the Agreement without the prior written consent of Owner.
- 2.7.2. Lines of Authority. The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide this definition to the Project Manager and all other affected parties such as the inspectors, subcontractors, Architects/Engineers, and Project Administrator, to provide general direction of the work and progress of the various phases and subcontractors. Directions given to Construction Manager's supervisor by Owner shall be binding on Construction Manager. The Project Administrator, Owner, and Architects/Engineers may attend meetings between the Construction Manager and its subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontracts. At all times during the course of the Work, the Construction Manager shall provide at this project site a Project Manager who shall be satisfactory to the Owner. The Construction Manager's Project Manager shall have authority to represent the Construction Manager. Upon the Owner's written request, Construction Manager shall give the Project Manager, in writing, complete authority to act on behalf of and to bind Construction Manager in all matters pertaining to the Work and this Agreement. Construction Manager shall furnish the Owner a copy of such authorization.
- 2.7.3. Schedule and Project Manual Provisions. The Construction Manager shall provide subcontractors with applicable portions of the Project Manual emphasizing their respective responsibilities for performance and the relationships of their work with respect to other subcontractors and suppliers. The Construction Manager shall also continue to provide current scheduling information, direction, and coordination regarding milestones, and beginning and finishing dates to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction

work, material supplies, long lease procurement, approval of shop drawings, contract modifications in progress, schedules for contract modifications, and performance testing requirements. The Construction Manager shall review each subcontractor's construction schedule and conformance with applicable Contract Documents and ensure that established completion dates will comply with overall Project schedule requirements. The Construction Manager shall review the progress of construction of each subcontractor on a monthly basis, evaluate the percentage completion and compare actual progress to schedule, and determine and implement alternative courses of action that may be necessary to achieve timely and complete contract compliance by the subcontractor. The Construction Manager shall determine the effect on schedules of requested time extensions and require recovery schedules from subcontractors as needed.

- 2.7.4. Solicitation of Bids. Without assuming responsibilities of the Architect/Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, as well as all Contract Documents for all procurements of long lead items, materials and services, site utilities, and for all subcontractor contracts. A minimum of three (3) bids or proposals shall be solicited, if feasible. The Construction Manager shall schedule pre-bid conferences for subcontractors, material suppliers, equipment suppliers, and others interested in the Project. For subcontracts, the Construction Manager shall request and receive bids/proposals from those subcontractors on the pre-qualified subcontractor's list, established pursuant to Article 4.2. For separate subcontracts, the Construction Manager shall conduct a pre-bid conference with prospective bidders, the Architect/Engineer, and the Project Administrator. In the event that questions are raised which require an interpretation of the Bid Documents or otherwise indicate a need for a clarification or correction of the invitation, the Construction Manager shall coordinate the preparation of an addendum to the Bid Documents with the Architect/Engineer. The addendum shall be the medium for making any clarifications or corrections to the Bid Documents and will be issued to all of the prospective bidders. The Construction Manager shall analyze and evaluate the results of the various bids and their relationships to budgeted and estimated amounts, and prepare a bid tabulation analysis and such other support data as necessary to document the comparison of the various bids, their responsiveness to the desired scope of work, and the basis for the Construction Manager's selection.
- 2.7.5. Quality Control. The Construction Manager shall be responsible and accountable for the quality control of the work including quality control testing and inspection. The Construction Manager shall supervise the work of all subcontractors, reviewing construction means, methods, techniques, sequences and procedures, providing instructions to each when their work does not conform to the requirements of the Construction Documents for the Project. The Construction Manager shall continue to exert its influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. The Construction Manager shall receive copies of all claims or reports issued by the Project Architect/Engineers' Field Representative relative to the performance or acceptability of work. Should disagreement occur between the Construction Manager and either the Project Administrator or the Project Architect/Engineer over acceptability of work and its conformance with the requirements of the Construction Documents of the Project, the Owner shall be the final judge of performance and acceptability, and noncompliant work shall be corrected accordingly. The Project Administrator or the Owner may employ an independent firm for verification testing of the quality control testing. The Construction Manager will exercise reasonable care and diligence in discovering and promptly reporting to Owner any defects or deficiencies in the Work. The Construction Manager shall establish Project schedules and schedule milestones and review the progress schedules submitted by subcontractors in order to ensure proper completion of Work.

- 2.7.6. Subcontractor Interfacing. The Construction Manager shall be the single point of interface with all of its subcontractors and suppliers, and there is no requirement that Owner or any of its agents or representatives, including the Project Architect/Engineer, interface with such subcontractors and suppliers. The Construction Manager shall negotiate all contract modifications and field orders with all affected subcontractors. The Construction Manager shall review the costs of those proposals and advise the Owner and Project Architect/Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each contract modification from the Owner. Before any work is begun on any contract modification, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall also carefully review all shop drawings and then transmit the same to the Project Architect/Engineer for review and actions. The Project Architect/Engineer will transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Project Architect/Engineer to make interpretations of the plans or specifications requested by the subcontractors via submission of a Request for Information form (as provided in the Project Procedures Manual). The Construction Manager shall maintain a document control/correspondence log system to promote expeditious handling of all submittals and Requests for Information. The Construction Manager shall advise Project Administrator and Project Architect/Engineer when timely response is not occurring on any of the above.
- 2.7.7. Coordination with Adjacent Work. The Construction Manager shall coordinate with any other contracts or assigned work Owner may issue directly for this Project pursuant to Article 1.2, and for any work adjacent to or interfacing with the Project.
- 2.7.8. Permits. The Construction Manager shall coordinate with the Project Architect/Engineer regarding the submittal of all required documents for permits. The Construction Manager shall secure all necessary building permits from applicable permitting authorities and all necessary utility connection permits, the cost of which will be considered a direct cost item.
- 2.7.9. Safety Program. The Construction Manager shall designate a full-time staff member as the Project safety director who shall oversee job safety and accident prevention for the Construction Manager. This individual shall review the proposed safety program of each subcontractor and make appropriate recommendations. The Construction Manager shall conduct a review of job safety and accident prevention at its progress meetings with subcontractors. The performance of such services by the Construction Manager shall not relieve the subcontractors of their responsibilities for the safety of persons and property, and for compliance with all federal, state, and local statutes, rules, regulations, and orders applicable to the conduct of the Work.
- 2.7.10. Inspection Coordination. The Construction Manager shall coordinate all technical inspection and testing provided by professionals designated by Project Administrator, the Owner, permitting authorities, and others. The Construction Manager shall also schedule the services of independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements and provide a copy of all inspection and testing reports to Project Administrator on the day of inspection or test. The Construction Manager shall provide reasonable prior notice to appropriate inspectors before the work is covered up, but in no event less than twenty-four (24) hours before the work is covered up. All costs for uncovering work not inspected and any reconstruction due to lack of reasonable prior notice shall be borne by Construction Manager. If members of the Project Team are to observe said inspections, tests, or approvals required by the Contract Documents, they shall be notified in writing by the Construction Manager of the dates and times of the inspections, tests, or other approvals. The Construction Manager shall schedule, direct, and/or review the services of or

the reports and/or findings of surveyors, environmental consultants and testing and inspection agents engaged by the Owner. All Materials and Equipment furnished by Construction Manager and Work performed by Construction Manager shall at all times be subject to inspection and testing by Owner or inspectors or representatives appointed by Owner or by the Project Administrator. Whenever requested, Construction Manager shall give Owner and any inspectors or representatives appointed by Owner free access to its work during normal working hours either at the jobsite or its shops, factories, or places of business of Construction Manager and its subcontractors and suppliers for properly inspecting materials, equipment and work, and shall furnish them with full information as to the progress of the Work in its various parts. If any of the Work should be covered up without approval or consent of Owner's Project Administrator, or without necessary test and inspection, Construction Manager shall, if required by Owner's Project Administrator or by public authorities, uncover such Work for examination and testing, and shall re-cover same at Construction Manager's expense.

- 2.7.11. Construction Administration. The Construction Manager shall provide, as part of its Construction phase fee, jobsite administrative functions during construction to assure proper supervision, coordination and documentation, including but not limited to such things as the following:
 - 2.7.11.1. Supervision of Work. Provide full-time representation at the Project site to become familiar in detail with the progress and quality of the Work completed, to determine in detail if the Work is proceeding in accordance with all the requirements of the Contract Documents, to ensure compliance with the plans and specifications for the Project, coordination with other work, and to ensure compliance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and decrees.
 - 2.7.11.2. Daily Logs. Maintain a log and electronic database of daily activities for the Project including, at a minimum, the following information in a bound log: the day, date, weather conditions, and how any weather condition affected the progress of the Work; time of commencement of work for the day; the work being performed; material, labor, personnel, equipment, and subcontractors at the Project site; visitors to the Project site including representatives of the Owner, Project Administrator, and Project Architect/Engineer; any special or unusual conditions or occurrences encountered; and the time of termination of work for the day. The log and database shall be available to the Owner, Project Administrator, Project Architect/Engineer, and inspectors upon request.
 - 2.7.11.3. Project Rosters. Maintain for the Project a roster of companies on the Project with names and telephone numbers of key personnel, and provide a means of identifying workers on site in accordance with the approved security plan.
 - 2.7.11.4. Job Meetings. Hold weekly progress and coordination meetings with the Project Manager to provide for an easy flowing project and orderly progress of the work, including implementation of procedures, and to assure timely submittals and expeditious processing of approvals and return of shop drawings, samples, etc. The Construction Manager shall advise the other Project Team members of their required participation in any meeting or inspection, giving each approximately one (1) weeks' notice, unless such notice is made impossible by conditions beyond the Construction Manager's control. The Construction Manager shall hold jobsite meetings at least once each month with the Project Team.
 - 2.7.11.5. Project Team Meetings. The Construction Manager, Project Administrator and Project Architect/Engineer shall meet regularly as the progress of the Project require, but in no case less than every two weeks for the Project, to review and

agree upon the work performed to date and to establish the controlling items of work for the next two weeks.

- 2.7.11.6. Shop Drawing Submittals/Approvals. Work with the Project Team to establish and implement procedures for expediting and processing all shop drawings, samples, submittals and detail plans/drawings, and other documents, maximizing the use of electronic plan media to the greatest extent possible for submittal and transmittal to the Project Architect/Engineer of such plans for action, and closely monitor their submittal and approval process. The Construction Manager shall be responsible for the initial review and appropriate circulation of submittals.
- 2.7.11.7. Material and Equipment Expediting. Closely monitor material and equipment deliveries, critically important checking, and follow-up procedures on supplier commitments of all subcontractors.
- 2.7.11.8. Payments to subcontractors. Review and process invoices from subcontractors and suppliers.
- 2.7.11.9. Document Interpretation. Refer all questions for interpretation of the documents prepared by the Project Architect/Engineer to the Project Architect/Engineer.
- 2.7.11.10. Reports and Project Site Documents. Record the progress of the project as required by this agreement, as well as directed by the Project Administrator. Submit written progress reports to the Owner and the Project Architect/Engineer including information on the subcontractor's work, and the percentage of completion. Keep a daily log available to the Owner, the Project Architect/Engineer and the permitting authority inspectors.
- 2.7.11.11. Subcontractors' Punch Lists. Prepare periodic punch lists for each subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- 2.7.11.12. Signage. Arrange for all appropriate Project signage necessary for identification, direction, or control for safety and maintenance of traffic. The layout, need, and location of all signage must be approved by the Project Administrator, and the signage shall be prepared by a professional sign maker.
- 2.7.11.13. Printing. Arrange for the printing and distribution of all required bidding documents and shop drawings, including the sets required by any permitting authority's inspectors.
- 2.7.11.14. Cleaning. Cause the subcontractors to keep the premises where the Work is underway reasonably free from accumulations of waste material or rubbish. Upon Substantial Completion of portions of the Work, the Construction Manager shall cause the appropriate subcontractors to remove all rubbish, tools, scaffolding and surplus materials from and about the premises and leave such Work area clean and ready for occupancy.
- 2.7.11.15. Protection of Property. Take all reasonable precautions for the safety of, and shall monitor the subcontractors for reasonable protection to prevent damage, injury or loss to all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Construction Manager or a subcontractor, and other property at the site or adjacent thereto, including walks, pavements, roadways, structures and utilities not

designated for removal, relocation or replacement in the course of construction. The Construction Manager shall cause all subcontractors and other agents of Construction Manager to protect Owner's property from loss or injury that may arise in connection with the Work.

- 2.7.11.16. **Contract Modification Administration.** Administer contract modifications in conjunction with the Project Administrator regarding revised plans or sketches as prepared by the Architect for items of extra work or changes of scope (as required), review each requested change in the Work or directed extra Work to compare with the prices quoted by the subcontractors. With approval of Owner, conduct negotiations with subcontractors and develop contract modifications to incorporate the changes or extra work into the subcontracts and process each contract modification through the respective subcontractor and submit to Owner for approval. The Construction Manager shall evaluate the scope of subcontractor's proposal with respect to the proposed contract modifications and substitutions proposed by the subcontractor and make recommendations to Owner. Owner shall have the option to reject proposed contract modifications and substitutions and the Owner shall coordinate the revision of the Plans and Specifications accordingly. Any work performed under a proposed contract modification issued without prior Owner approval shall be subject to removal and replacement at the Construction Manager's cost, should Owner subsequently object thereto. The Construction Manager shall have no authority to authorize changes in Contract Documents of any kind or to modify any deadlines for completion of Work specified in the Contract Documents.
- 2.7.11.17. **Administration of Claims.** The Construction Manager shall administer claims from subcontractors and suppliers as to their validity under the terms of the subcontracts. Upon being advised of any proposed contract modification, the Construction Manager shall submit to the Project Team the estimated cost of, or savings attributable to, such contract modification and the estimated impact thereof on the Project Schedule. No contract modification shall be effective until the Construction Manager receives approvals in writing from Owner. Upon receipt of such approval from Owner and execution by the applicable subcontractors, such contract modification shall become a part of the Contract Documents, and the Construction Manager shall promptly cause the performance of the Work so changed to proceed. In the event a contract modification necessitates a change in a Project schedule, such schedule and associated costs shall be changed by a reasonable amount, subject to the provisions of Article 9. Agreement on any contract modification shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefore pursuant to the terms of this Agreement.
- 2.7.11.18. **Dispute Resolution.** Resolve, in consultation with the Project Team, all disputes that may arise with or between subcontractors and/or material suppliers as a result of the construction.
- 2.7.11.19. **Substitution of Material.** If a subcontractor recommends or proposes substitution of material or other changes in the Work from the material or Work specified in the Construction Documents after bids and/or proposals for that Work have been received, evaluated and awarded, the Construction Manager, subject to the Project Administrator's and Project Architect/ Engineer's review and approval, shall evaluate such proposal and make a recommendation to the Project Team. If approved, the Construction Manager shall process a contract modification.

- 2.7.11.20. Mechanical Completion. Prepare a procedure prior to completion checkout for Owner review and approval at least two (2) months prior to the scheduled commencement of checkout for Mechanical Completion.
- 2.7.11.21. Substantial Completion. Ascertain when the work or designated portions thereof are ready for the Project Architect/Engineer's substantial completion inspection. From the Project Architect/Engineer's list of incomplete or unsatisfactory items, prepare a schedule for completion of such items, indicating proposed completion dates for the Owner's review. The Project Architect/Engineer and Owner may conduct a pre-substantial completion and will prepare the pre-substantial completion punch list from which the Construction Manager will develop a completion schedule. The Project Architect/Engineer will issue a certificate of substantial completion when the work on its pre-substantial completion punch list has been accomplished. Between two to three weeks after Substantial Completion of each phase of a Project, conduct walk-through inspections of the Project and promptly advise Owner in writing of any known or observable defects or deficiencies in the Project and of any known or observable non-conformance of the Work with the Construction Documents. Construction Manager shall ensure timely correction of any defects or deficiencies in the Work.
- 2.7.11.22. Record Plans/Drawings. During the progress of the work for this project, the Construction Manager shall require the plumbing, air conditioning, heating, ventilating, elevator, and electrical subcontractors to record on their field sets of plans the exact locations, as installed, of all conduit, pipe and duct lines whether concealed or exposed which were not installed exactly as shown on the contract plans. The Construction Manager shall also record all plan revisions that have been authorized by contract modification that effect wall or partition locations, door and window locations and other template changes. Accurate dimensional locations for all items shall be recorded. The exact routing of conduit runs and underground utilities shall be shown on these plans. Each plan shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the work. Where the work was installed exactly as shown on the contract plans the sheets shall not be disturbed except as noted above.

2.8. Post-Construction

In addition to any other services to be performed during the Construction phase, as may be specified elsewhere in this Agreement, the Construction Manager shall perform the following Post-Construction Phase services:

- 2.8.1. Final Completion. Monitor the subcontractor's performance on the completion of this project and provide notice to the Owner and Project Architect/Engineer that the work is ready for final inspection.
- 2.8.2. LEED Commissioning. Assist Owner and Project Architect/Engineer in preparing an operation and maintenance schedule manual for building systems and equipment which shall include, without limitation, the following: (i) all operation and maintenance manuals provided by the subcontractors; (ii) a complete listing of all vendors and material suppliers (firm name, address, telephone number and contact person for each such vendor and material supplier) cross referenced to the subcontractor responsible for procurement of the particular item purchased from each such vendor and material supplier; and (iii) a complete description of all safety precautions to be observed during routine or emergency maintenance. Deliver operating and maintenance manuals for building systems and equipment to Project Architect/Engineer.
- 2.8.3. Warranties. Secure and transmit to the Owner, through the Project Administrator, all required guarantees, affidavits, releases, bonds and waivers, manuals, record plans, and maintenance books.
- 2.8.4. Start-Up. With the Owner's personnel, direct the checkout of utilities, operations, systems, and equipment for readiness and assist in their initial start-up and testing by the subcontractors.
- 2.8.5. Record Plans/Drawings. The Construction Manager shall review the completed As-Built plans and ascertain that all data furnished on the plans are accurate and truly represent the work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines, inverts, etc. are involved as part of the work; the Construction Manager shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for this project.
- 2.8.6. Owner Occupancy. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the Construction Manager or subcontractors, "on line" in such conditions as will satisfy Owner operational requirements.
- 2.8.7. The Construction Manager shall catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training in equipment use for building operators.
- 2.8.8. The Construction Manager shall secure, assemble, and deliver required guarantees and warranties to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation.
- 2.8.9. Warranty. For this project, no work can be performed by the Construction Manager's own force, with the exception as stated in 4.1 with the approval of Owner, but where work is performed by subcontractors under contract for the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such. Work will be new

except where indicated otherwise in Contract Documents, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Plans and Specifications and will give proper and continuous service under all conditions of service required by, specified in, or which may be reasonably inferred from the Contract Documents. With respect to the same Work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Plans and Specifications for a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Building Technical Specifications, as well as any damage to the Work resulting from defective design, materials, equipment, or workmanship which develop during construction or during the Warranty Period. The Construction Manager only has design responsibility for shop plans and other Construction Manager-initiated designs. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. All such warranties shall commence upon Substantial Completion of the applicable Project, unless the warranted work is not completed or has been rejected, in which case the warranty for the work shall commence on the completion or acceptance of the work. Also, the Construction Manager shall conduct, jointly with the Owner and the Project Architect/Engineer, a warranty inspection nine (9) months after the date of Owner Occupancy.

2.8.9.1. Any repair or replacements done under this Warranty shall comply with the requirements of the Contract Documents and shall be verified by the performance of Construction Manager testing as Owner may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne by Construction Manager. Construction Manager warrants such repaired or replaced work against defective design, materials, and workmanship for a period of twelve (12) months from and after substantial completion of the Project or twelve (12) months from the time of such repair or replacement, whichever occurs latest. The Construction Manager only has redesign responsibility for shop drawings and other Construction Manager-initiated designs. Should Construction Manager fail to promptly make the necessary redesign, repair, replacement, and tests, Owner may perform or cause to be performed the same at Construction Manager's expense. Construction Manager shall reimburse the expense incurred by Owner for such remedial work within thirty (30) days from the date of receipt of Owner's invoice therefore. Construction Manager shall be liable for the satisfaction and full performance of the warranties as set forth herein.

2.9. Project Closeout

In addition to any other services to be performed during the Construction Phase or Post-Construction Phase of any Project, as may be specified elsewhere in this Agreement, the Construction Manager shall perform such services relating to closing out the Project as requested by Owner, or as set forth in the Project Procedures Manual.

**ARTICLE 3
OWNER'S RESPONSIBILITIES**

- 3.1. Owner's Information. The Owner shall provide full information regarding its requirements for the Project.
- 3.2. Project Administrator. The Owner shall designate a representative for the Project who shall be fully acquainted with the Project. The Project Administrator shall serve as the day-to-day contact with the Construction Manager. A representative for the Project Administrator shall serve as the person designated by the Owner to provide direct interface with the Construction Manager with respect to the Owner's responsibilities. The Owner shall define the lines of the Project Administrator's authority to approve Project Construction Budgets and changes in the Project. The Owner shall render decisions promptly and furnish information expeditiously.
- 3.3. Architect/Engineers' Agreements. The Owner shall retain Architect/Engineers for design and to prepare construction documents for this project.
- 3.4. Site Survey and Reports. The Owner shall provide for the furnishing for the site of this project all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations, and a legal description.
- 3.5. Approvals. The Owner shall pay for necessary approvals, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.
- 3.6. Legal Services. The Owner shall obtain at its own cost such legal services as may be necessary for providing the items set forth in Article 3.6 and such auditing services as he may require.
- 3.7. Plans and Specifications. The Construction Manager will be furnished an electronic set of all plans and specifications for bid documents reasonably necessary and ready for printing. Delineation of specifications is as follows: from the footprint of all buildings in the Building Technical Specifications, and all pertinent modifications thereto shall apply. From the footprint of the buildings out, the site specification which are anticipated o include certain portions of Divisions II and III (and applicable portions of Division I) of the Standard Specifications for Road and Bridge Construction (2015) and all pertinent modifications thereto shall apply.
- 3.8. Cost of Surveys and Reports. The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.
- 3.10 Project Fault Defects. If the Owner or Project Administrator becomes aware of any fault or defect in any Project or non-conformance with the plans and specifications, they shall give prompt written notice thereof to the Construction Manager and Architect/Engineer.
- 3.11 Lines of Communication. The Owner, Project Administrator, and Architect/Engineers shall communicate with the subcontractors or suppliers only through the Construction Manager as long as such method of communication is effective in maintaining project schedules and quality.
- 3.12 Lines of Authority. The Owner and Project Administrator shall establish and maintain lines of authority for their personnel and shall provide this definition to the Construction Manager and all other affected parties.

ARTICLE 4
PERFORMANCE OF WORK AND SUBCONTRACTS

- 4.1. Performance of Work by Construction Manager. It is the intent of this Agreement that the construction work under the Project shall be performed solely by subcontractors to the Construction Manager. However, the Construction Manager may perform portions of the work with its own personnel, with the approval of the Owner, if the services of a responsive and responsible subcontractor cannot be retained.
- 4.2. Pre-Qualification of Bidders. The Construction Manager, in consultation with the Project Team, shall establish objective pre-qualification guidelines to be applied by the Construction Manager for subcontracts and major suppliers. Financial stability, past performance, bonding capacity, safety record, and personnel will be among the guidelines used. At the discretion of the Construction Manager, on subcontracts where the bid exceeds \$250,000.00, each subcontractor may be required to submit a completed experience questionnaire and financial information; and/or previously been pre-qualified as included in Construction Manager's estimating database. The subcontractor's financial condition must demonstrate that adequate fixed and liquid assets and equipment are available to properly perform the subcontract. The Construction Manager shall advertise all prospective subcontract work for purposes of pre-qualification using public means (e.g., newspaper) and shall receive letters of interest and other data deemed necessary by the Construction Manager for proper pre-qualification. Submittals by prospective subcontractors shall be evaluated by the Construction Manager pursuant to the pre-qualification guidelines. Proposers meeting the Construction Manager's pre-qualification guidelines shall be placed on a list of pre-qualified subcontractors. Except where a trade is represented by less than three pre-qualified subcontractors, bids shall only be accepted from the list of pre-qualified subcontractors or suppliers.
- 4.3. Subcontract and Supplier Bids and Proposals. The Construction Manager shall solicit subcontract bids or proposals from the pre-qualified subcontractors and suppliers. Such solicitations shall specifically state that no contractual relationship will be created with Owner. The Construction Manager shall award subcontracts to the lowest responsive and responsible bidders or proposers after the proposals are reviewed by the Construction Manager. The Construction Manager shall provide a summation and analysis of the apparent low subcontract bids, including the identity of any apparent low subcontract bidders that the Construction Manager does not wish to employ. Such identification and proposal of non-utilization by the Construction Manager shall require specific written reason for same. In no case shall the Project Administrator or the Owner have any contractual relationship with a subcontractor or responsibility for subcontractor performance.
- 4.4. Owners Right to Disapprove. The Owner retains the right to object to the award of a subcontract to any specific bidder if such award would be, in the Owner's judgment, prejudicial to its best interest. If the Owner objects to a subcontractor or supplier award by Construction Manager, the Construction Manager shall select an acceptable substitute. If the substituted subcontractor's bid exceeds the budgeted value of the work contained in an accepted Project GMP, a contract modification shall be issued to cover the additional costs occasioned by such substitution.
- 4.5. Third-Party Relationship. Nothing in this Agreement, the subcontracts, or in purchase orders issued by the Construction Manager shall create any contractual relationship between the Owner and any subcontractor or supplier (except as may be necessary to provide the required indemnification and warranties). The subcontracts and purchase orders shall specifically state that no such relationship is created hereby. However, the Owner is mutually recognized as a third-party beneficiary of all such subcontracts.

4.6. Required Subcontract Conditions

- 4.6.1. Subcontractual Relations. By an appropriate written agreement, the Construction Manager shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities that the Construction Manager by these Documents assumes toward the Owner and the Project Architect/Engineer. Said agreements shall preserve and protect the rights of the Owner and Project Architect/Engineer under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. The agreement shall also require the subcontractor to assume toward the Owner all obligations and responsibility that the subcontractor has to the Construction Manager in the event that this Agreement is terminated and the Owner desires to assume the subcontract. Where appropriate, the Construction Manager shall require each subcontractor to enter into similar agreements with its sub-subcontractor.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 4.6, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such Documents available to its sub-subcontractors.

4.6.2. Subcontract Requirements

- 4.6.2.1. Workforce. The subcontractor must agree to perform no less than 15% of his construction work cost utilizing its own employees.

- 4.6.2.2. Supervision. The subcontractor must agree to provide field (on-site) supervision through a named superintendent for each trade (general concrete forming and placement, masonry, mechanical, plumbing, electrical, and roofing). In addition, the subcontractor shall assign and name a qualified employee for scheduling direction for its work. The supervisory employees of the subcontractor (including field superintendent, foreman, and schedulers at all levels) must have been employed in a supervisory (leadership) capacity of substantially equivalent level on a similar project for at least two (2) years within the last five (5) years. The subcontractor shall include a resume of experience for each employee identified by the subcontractor to supervise and schedule its work.

- 4.6.2.3. All subcontracts shall provide:

a. **LIMITATION OF REMEDY - NO DAMAGES FOR DELAY**

That the subcontractor's exclusive remedy for damages for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner, Project Administrator, or Architect/Engineer or attributable to the Owner, Project Administrator, or Architect/Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time; provided, however, that subcontractor shall also be entitled to its actual costs of delay, as defined in Article 8, if such delay is caused by Owner, Project Administrator, or Architect/Engineer.

In the event of a change in the work, the subcontractor's claim for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus no more than 10% for overhead and profit and bond costs.

Each subcontract shall require the subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedies for delays and changes

in the work and thus eliminate any other remedies for claim for increase in the contract price, damages, losses, or additional compensation.

- b. Each subcontract shall require that any claims by subcontractor for delay or additional cost must be submitted to Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.
 - c. Each subcontract shall include an acknowledgement by each subcontractor and supplier that the payment bond provided by Construction Manager pursuant to this Agreement is a substitute for the right to claim a lien on the project, and that any claims for nonpayment shall be made against the bond in accordance with Section 255.05, Florida Statutes.
- 4.6.3. Responsibilities for Acts and Omissions. The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the work or supplying materials under a contract to the Construction Manager.
- 4.6.4. Subcontracts to be Provided. The Construction Manager shall provide upon request a copy of each subcontract, including the general supplementary conditions, to the Owner.

ARTICLE 5

SCHEDULE, TIME OF COMMENCEMENT, AND SUBSTANTIAL COMPLETION

- 5.1. At the time a GMP is established, as provided for in Article 6, the Project Team shall establish a project substantial completion date, a project final completion date and an Owner Occupancy date for completion of the project in accordance with the master project schedule. The Construction Manager agrees to complete the construction in accordance with the agreed upon substantial completion date, final completion date and Owner Occupancy date (hereinafter the "Construction Dates". The Construction Manager acknowledges that failure to complete the project within the construction time set forth in the approved schedule, in accordance with the Contract Documents, may result in substantial damages to the Owner, for all of which damages the Construction Manager shall be liable
- 5.2. In the event the Construction Manager fails to complete the construction in accordance with the Contract Documents by the project final completion date set forth in the approved schedule, the Construction Manager shall pay to the Owner as liquidated damages for such delay, and not as a penalty, as indicated below. Said liquidated damages shall not exclude the recovery of damages by the Owner under other provisions of the Contract Documents. The Owner has the right to apply, as payment on such liquidated damages, any money the Owner owed to the Construction Manager. If the Owner allows the Construction Manager to perform after failure to meet the project final completion date, the Owner's action shall in no way act as a waiver on the part of the Owner to the liquidated damage under this Agreement. The Owner's exercise of the right to terminate shall not release the Construction Manager from its obligation to pay said liquidated damages as follows:

Original Contract Amount - Daily Charge per Calendar Day

| | |
|--|--|
| \$50,000 and Under | \$554 |
| Over \$50,000, but less than \$250,000 | \$676 |
| \$250,000, but less than \$500,000 | \$994 |
| \$500,000, but less than \$2,500,000 | \$1,216 |
| \$2,500,000, but less than \$5,000,000 | \$2,106 |
| \$5,000,000, but less than \$10,000,000 | \$3,218 |
| \$10,000,000, but less than \$15,000,000 | \$3,182 |
| \$15,000,000, but less than \$20,000,000 | \$7,614 |
| \$20,000,000 and Over | \$7,614, plus 0.00027% for any amount over \$20 million |

5.3. Mechanical Completion of a Project shall be deemed to occur when:

- 5.3.1. The Construction Manager has completed all Work except the installation of insulation, painting, final clean-up, final grading and any portion of the Work not affecting the operability or safety or the mechanical, electrical or structural integrity of the Work, and such remaining work shall be described on a Mechanical Completion Punch list prepared by Construction Manager and accepted by Owner;
- 5.3.2. The Work is structurally, mechanically, electrically and functionally constructed in accordance with the requirements of the Contract Documents;
- 5.3.3. The Construction Manager has provided Owner with a report of the results of required tests performed pursuant to the Contract Documents complete with sufficient detail to enable Owner to determine if Mechanical Completion has in fact been achieved;
- 5.3.4. All Pre-Commissioning activities, including alignment, balancing, lubrication, and First-Fill have been completed;
- 5.3.5. The Work may be operated without damage to the Work or to the Facility;
- 5.3.6. The Work is capable of being operated within manufacturers' recommended limits and in compliance with Applicable Laws;
- 5.3.7. The Work is ready for LEED commissioning, adjustment and performance testing; and
- 5.3.8. Construction Manager has corrected all defects, deficiencies, and/or discrepancies to the entire Work as identified by Owner and Owner has accepted such corrections in writing.

Upon Owner's determination that Construction Manager has satisfactorily corrected all defects, deficiencies, and/or discrepancies to the entire Work as identified by Owner, Owner will issue a Notice of Mechanical Acceptance, dated to reflect the actual date of Mechanical Acceptance.

5.4. Substantial Completion of a Project shall be deemed to occur when:

- 5.4.1. Mechanical Completion has been achieved;
- 5.4.2. Operational testing, whether by Subcontractor, or Construction Manager, or both, has been successfully completed;
- 5.4.3. Performance Guaranties, if any, have been demonstrated;
- 5.4.4. Construction Manager has delivered to the Owner a Substantial Completion Punch List of items to be completed or corrected, prepared by Construction Manager and accepted by Owner (failure to include any items on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents);

- 5.4.5. The Work is ready for uninterrupted operation;
- 5.4.6. Permitting agencies have issued temporary or permanent Certificate(s) of Occupancy; and
- 5.4.7. The Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Owner can occupy the Work and utilize it for its intended use.

When the Owner, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, and when the Construction Manager has complied with all other conditions precedent to Substantial Completion provided for in the Contract Documents, the Owner will then prepare a Notice of Substantial Completion which shall establish the Substantial Completion Date, shall state the responsibilities of Construction Manager, if any, for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Construction Manager shall complete the items listed in the Substantial Completion Punch List. If the Owner issues a Notice of Substantial Completion on the basis of partial completion of a Project, or upon the basis of a partial or temporary Certificate of Occupancy, Owner may include such additional conditions, as it deems appropriate to protect its interests pending substantial completion of the entire project or issuance of a permanent Certificate of Occupancy.

- 5.5. Final Completion of a Project shall be deemed to have occurred if all the following have occurred:
 - 5.5.1. Substantial Completion has occurred;
 - 5.5.2. The Work can be used and operated in accordance with Applicable Laws and Applicable Permits;
 - 5.5.3. All spare parts and special tools purchased by Construction Manager as part of Vendor supplies shall have been delivered to Owner and clear of all Liens;
 - 5.5.4. All items on the Substantial Completion Punch List shall have been completed by Construction Manager to Owner's satisfaction;
 - 5.5.5. Construction Manager has satisfied the additional conditions prescribed by the Owner in conjunction with a Notice of Substantial Completion issued on the basis of partial completion of a Project, or a partial or temporary Certificate of Occupancy;
 - 5.5.6. Construction Manager shall have provided to Owner releases and waivers of liens for all Work performed by Construction Manager and each Subcontractor or Vendor where the applicable Contract price or purchase order value exceeds \$10,000;
 - 5.5.7. Construction Manager shall have delivered to Construction Manager a certification identifying all outstanding claims (exclusive of any Liens or other such encumbrances which must have been discharged) of Construction Manager (and of its subcontractors, Vendors and any other party against Construction Manager) under the Project with written documentation reasonably sufficient to support such claims;
 - 5.5.8. Construction Manager shall have made a written assignment to Owner of all warranties or guaranties which Construction Manager received from Subcontractors or Vendors to the extent Construction Manager is obligated to do so;
 - 5.5.9. Construction Manager shall have delivered to Owner a complete set of As-Built Documents and Project Record Plans/Drawings prepared in accordance with the Contract Documents;

- 5.5.10. Construction Manager has delivered to Owner all other submittals required by the Contract Documents, including, but not limited to, all installation, operations and maintenance manuals for equipment furnished by Construction Manager and all product data sheets for all materials furnished by Construction Manager;
- 5.5.11. All rubbish and debris have been removed from the Jobsite; and
- 5.5.12. All Construction Aids have been removed from the Jobsite.
- 5.5.13. Construction Manager has delivered to the Owner all warranties and guarantees required by the Contract Documents.
- 5.6. Final Acceptance of a Project shall be deemed to have occurred if:
 - 5.6.1. Final Completion has occurred;
 - 5.6.2. Owner shall have received from Construction Manager all information required for Owner's final tax and fixed asset records with respect to the Work; and
 - 5.6.3. Construction Manager agrees to cooperate in good faith with the Project Administrator to enable the Project Administrator to deliver to the Owner certification to the effect that the event or items referenced in Articles 5.3 through 5.6 have occurred.

Owner shall deliver to Construction Manager a Certificate of Final Acceptance as soon as practicable following declaration by Owner that Final Acceptance has occurred.

ARTICLE 6 GURARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 6.1. The initial schedule prepared by the Construction Manager for the Project shall reflect and track the design progress through the completion of design and through the presentation of the proposed GMP for the construction of the Project. The Construction Manager shall follow the process required by this Agreement for the preparation and submittal of a GMP for the Project. The Construction Manager shall propose for the Project, the amount to be included in the Project GMP for the Construction Manager's general conditions costs and contingency. The Owner shall have the option of accepting or rejecting the Project GMP as presented by the Construction Manager. Should the Project GMP be accepted, the Owner will issue a Notice to Proceed with GMP Amendment No.1 to Agreement between Owner and Construction Manager, as shown in Exhibit D. Once the GMP is accepted by Owner, any mistakes by Construction Manager in estimating costs or work in its preparation of a GMP shall not serve as the basis for a claim by Construction Manager or upward adjustment to the GMP.

Upon acceptance of a proposed GMP and execution of the relevant Contract Documents for a project, including a Guaranteed Maximum Price (GMP) amendment to this Agreement between Owner and Construction Manager, the GMP for the project will be fixed and firm for the duration of the Work and include all Construction Manager costs, expenses, taxes, overhead and profit for full and complete performance of the Work, as further described below. The GMP is not subject to price escalation or de-escalation and is not subject to increase or decrease except for changes in the Scope of Work as provided for and in accordance with the relevant provisions of the Contract Documents. The GMP shall be construed at any given point in time to include any firm fixed adjustments thereto made in accordance with the relevant provisions of the Contract Documents.

The proposed Project GMP shall form the basis of negotiations between the Construction Manager and the Owner. The Owner shall have no obligation to accept any GMP proposal of the Construction Manager regardless of that proposal's relationship to the Owner's Budget or the most current Estimate or for any other reason. After each negotiation session, unless agreement is reached the Owner shall determine if further negotiations are warranted. If not, the negotiations shall be declared not to be successful, and the Owner shall take possession and ownership of all documents produced for the design and bid phase, pay the Construction Manager any remaining undisputed Construction Manager's Fee, and proceed as follows:

- 6.1.1. Reject the GMP and direct the Architect/Engineer for the Project and the Construction Manager to investigate, redesign, develop for Owner approval value engineering possibilities, and other cost savings and to re-submit a new, lesser, proposed GMP. This may, at the Owner's option, include reduction in scope; or,
 - 6.1.2. Reject the GMP, take possession of the plans and specification, and select a new construction manager for the Project, bid the work to a general contractor or otherwise complete with other forces or take such action, if any, that the Owner may determine is in its best interest. In this event, the Construction Manager shall not perform, nor be compensated for, any services at this site beyond the agreed Construction Manager's Preconstruction Services Fee for the project. In the event any option under this subparagraph is chosen by the Owner, the Construction Manager is obligated to immediately turn over to the Owner all plans, specifications and other project related documentation, and to coordinate its other work with the Owner's work pursuant to Article 2.7.7.
- 6.2. In addition to the Base GMP, the Project GMP will include an agreed upon sum as the Construction Contingency relating to construction of that Project. The Construction Contingency will be composed of two elements: the Construction Manager's Contingency and the Owner's Contingency, each of which will be specified in the GMP.
- 6.2.1. The Construction Manager's Contingency shall be a negotiated percentage of the Base GMP and shall be utilized to compensate for the increased Cost of the Project incurred by the Construction Manager due to unforeseen circumstances relating to construction of that Project which resulted in an unavoidable increase in costs, except when deemed the responsibility of the Owner. The Owner's Contingency shall be 5% of the Base GMP and shall be available to compensate for the increased Cost of the Project incurred by the Construction Manager due to changes in the work made at the discretion of the Owner after issuance of a Transfer Authorization, as well as other increases in the Cost of the Project which are deemed the responsibility of Owner.
 - 6.2.2. The Construction Manager will be required to furnish documentation evidencing all expenditures charged to the Construction Contingency, and demonstrating that the costs incurred were necessary for the Work. Construction Manager shall identify the amount sought to be charged to the Construction Contingency, whether the charge is to be applied to the Construction Manager's Contingency or the Owner's Contingency, and the reasons why the amount should be charged to that Contingency. Documentation for use of the Contingency shall be determined by the Project Team, included in the Project Manual, and displayed monthly in the PMIS. The Project Architect/Engineer shall have authority to verify the actual costs.
 - 6.2.2.1. If bids are received below the applicable line items in the Project GMP, the surplus will be added to the Construction Manager's Contingency for that Project. If bids are received above the applicable line item in a Project GMP, the deficiency will be charged to the Construction Manager's contingency for that Project; however, such events shall not be cause to increase the Base GMP.
 - 6.2.2.2. If bids are not received for a portion of the work at or below the applicable line item amount in the Project GMP, the Construction Manager reserves the right

to perform that portion of the work as approved by the Owner or negotiate for its performance for the specified line item lump sum amount or less.

- 6.2.2.3. If a Project GMP includes a general allowance for an item of work, and the plans or specifications do not provide a basis for estimating the cost of the work, any actual cost sought to be recovered by Construction Manager that exceeds the allowance will be charged to the Owner's contingency.
 - 6.2.2.4. The increased Cost of the Project incurred by the Construction Manager resulting from Owner's express written changes in plans, specifications, or work will be charged to the Owner's Contingency. The decision to make such changes, and to incur the costs that arise there from, shall be in the sole discretion of the Owner. No costs may be charged to the Owner's Contingency under this subarticle without express approval of Owner.
 - 6.2.2.5. The increased Cost of the Project incurred by the Construction Manager resulting from other actions of the Owner will be charged to the Owner's Contingency if they are deemed to be Owner's responsibility. Unless Construction Manager secures Owner's written agreement that such costs are Owner's responsibility, documentation of responsibility for such costs shall be submitted with the Construction Manager's claim. When Construction Manager has reason to anticipate that such costs may be incurred, it shall be the Construction Manager's responsibility, when feasible, to provide the Owner with sufficient advance notice (of no less than fourteen [14] days), so as to provide the Owner with a reasonable opportunity to avoid such costs. Such costs shall be deemed the Owner's responsibility if Owner subsequently agrees in writing to grant the claim and accept such responsibility, or if the claim is granted and responsibility assigned to Owner pursuant to the dispute resolution process under Article 16.6 and all reviews thereof are exhausted or waived by Owner.
 - 6.2.2.6. The grant of a claim shall not result in a charge against the Owner's Contingency unless the claim expressly requests a charge against the Owner's Contingency and the grant of the claim expressly approves the charge against the Owner's Contingency.
 - 6.2.2.7. The Owner retains the right to increase the Base GMP in lieu of charging the cost to the Owner's Contingency.
- 6.3. The GMP will only include those taxes in the cost of the project that are legally enacted at the time the GMP is established. Any sales tax savings as a result of this being a state project, whether by acquisition procedure or change in sales tax laws relating to public construction projects, shall be passed to the Owner either in the form of a reduction in the GMP or in an increase in a contingency, solely in the discretion of the Owner.
- 6.4. At the time of submission of a Project GMP proposal for a Project, the Construction Manager will propose a schedule for substantial completion of the Project. The Owner and the Construction Manager may negotiate incentives for early completion of the Project and sharing of cost savings.
- 6.5. The term "Project GMP," as used in this Agreement is a term of convenience only and is not intended to affect how a GMP or its components are to be determined or adjusted.

ARTICLE 7 CONSTRUCTION MANAGER'S FEE

7.1. In consideration of the performance of the services specified in this Agreement with respect to the Project on which the Owner has issued a notice to proceed, the Owner agrees to pay the Construction Manager as compensation for its services relating to the Project, fees as set forth in subarticles 7.1.1, 7.1.2, and 7.1.3.

7.1.1. Preconstruction Phase Fee. For the performance of Pre-Construction Services for this Project including profit and overhead related to these Pre-Construction Services, a fixed or “Not to Exceed” fee to be negotiated prior to the issuance of a Notice to Proceed. The Preconstruction Phase fee shall be paid in installments at completion of specified Preconstruction Services or deliverables. Pre-Construction Services for a Project shall include all services relating to design review through 100% Construction Documents for the Project and other services specified in Article 2.6. Pre-Construction Services for a Project may run concurrently with Construction Phase Services for the Project. The fee for the Preconstruction shall be a fixed lump sum fee, to be paid in five (5) equal payments at milestones as follows:

- Review of Preliminary Design Plans and delivery of cost model
- Phase Review of Design Development Plans and cost estimate
- Phase Reviews of 60% Design Plans and cost estimate
- Phase Reviews of 90% Design Plans and Delivery
- 100% Design Plans GMP and Schedule of Values (AIA G703)

Construction Manager will use the FDOT Design Staff Hour Estimation form to define scope and estimate required staff hours. Salary related cost markup shall be *1.

The Construction Manager’s personnel to be assigned during this phase and their duties and responsibilities to this Project and the duration of their assignments are shown in Exhibit C.

7.1.2. Construction Phase Fee (General Conditions). Prior to commencement of the Construction Phase for a Project, the Owner and Construction Manager will enter into an Amendment to this Agreement, and the Owner will issue a Notice to Proceed, directing the Construction Manager to proceed into the Construction Phase. The Construction Manager’s compensation for General Conditions work or services performed during the Construction Phase shall be a fixed lump sum amount fee negotiated as part of the Project GMP, based on a detailed schedule of General Conditions, costs, and services provided by the Construction Manager. (However, the Owner retains the right to review the need and effectiveness of any employee or employees assigned by the Construction Manager, should the Project Administrator question the need for the employee). The Construction Phase fee shall be invoiced and paid in monthly payments as agreed by the parties and set forth in the applicable Project GMP. The first monthly payment shall become due thirty (30) days following the issuance of the first Notice to Proceed by the Owner and the final monthly payment shall be paid only when construction of the project is finally completed and occupancy of the project accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner.

*1 Actual percentage to be negotiated.

7.1.2.1 Adjustments in Fee. For changes in a Project as provided in Article 9, the Construction Phase fee for the Project shall be adjusted as follows:

- a. The Construction Manager shall be paid an additional fee subject to negotiation with the Owner if the Construction Manager is placed in charge of reconstruction of an uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager, its employees, agents, subcontractors and others for whom Construction Manager may be responsible.
- b. Should the duration of the construction of a Project stipulated herein for final completion of a Project extend beyond the scheduled completion of the Project as set forth in the Project GMP, due to no fault of the Construction Manager or its subcontractors, the Construction Manager's Additional Construction Phase fee will be negotiated and set forth as an adjustment to in the Project GMP on a per working day basis. The Construction Manager's staff during such time extensions shall be established and set forth in the Project GMP.
- c. Construction Manager's Exclusive Remedy. In the event the construction Substantial or Final Completion date for a Project is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect/Engineer, or is attributable to the Owner or the Architect/Engineer, the Construction Manager's sole and exclusive remedy is an extension of the construction completion date and payment of additional Construction Phase fees and Overhead and Profit for Construction Phase as provided herein.

7.1.2.2 Costs and Expenses Included in Fee. The following are included in the Construction Manager's fee for General Conditions services during the Construction Phase of a Project and not otherwise reimbursable:

- a. Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices provided the personnel are assigned to the project.
- b. The Construction Manager's personnel to be assigned to the Project during the Construction Phase, whose duties and responsibilities to the Project and the duration of their assignments shall be shown in the applicable Project GMP.
- c. Salaries or other compensation of the Construction Manager's employees at the Project job site. The Construction Manager's personnel to be assigned to the site during the Construction phase under the Project Jobsite management and supervision fee, whose duties and responsibilities and the duration of their assignment will be established and included with the Project GMP.
- d. A labor multiplier will not be used for this project for general operating expenses.
- e. Those services set forth in Articles 2.7 and 2.8.
- f. Job office supplies, including paper, pencils, paper clips, file folders, staples, etc., and janitorial supplies (photo copy or blue print paper not included) used in connection with the Project.
- g. Minor General Conditions expenses at the Project site, such as telegrams,

long distance telephone calls, telephone service, expressage, postage, and similar petty cash items in connection with the Project to be billed at cost.

- h. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
- i. Costs for such temporary facilities during construction of the Project, including Construction Manager's trailer, temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
- j. Temporary housing for Construction Manager's project employees.
- k. Record retention/storage.

7.1.3. **Overhead and Profit for Construction Phase.** For overhead, profit, and general expenses of any kind, except as may be expressly included in Article 8 and the applicable Project GMP, for services provided during and related to the Construction Phase of any Project, the applicable Construction Overhead and Profit Fee shall be *2 of the GMP and shall be paid for any Project proportionally to approved expenditures for Direct Cost Items under Article 8.2, and less retainage (see Article 11.1), subject to the Project GMP, less the unused Owner's Contingency. The balance of the Construction Overhead and Profit Fee for a Project shall be paid upon Substantial Completion.

7.2. **Shared Savings.** It is intended that the Construction Manager fee will include a share of the cost savings, if any, realized during construction of this project completed by Construction Manager. This potential cost savings is recognized as the amount by which a project GMP, less the unused Construction Managers and Owner's Contingency, exceeds the Cost of the Project under Articles 8 and 9, plus the Construction Manager's fees under Articles 7.1.2 and 7.1.3. Construction Manager will receive *3 of the Project Cost Savings, as defined by subarticle 1.7.34, which shall be included in the Final Payment.

ARTICLE 8 COST OF THE PROJECT

8.1. The Owner agrees to pay the Construction Manager for the Cost of the Project as defined in this Article 8. Such payment shall be in addition to the Construction Manager's fees stipulated in Article 7.

8.2. Direct Cost Items

8.2.1. Wages paid for labor for personnel not included in the Construction Management Fee, but who are in the direct employ of the Construction Manager in the performance of the construction work for the Project, times a fixed multiple of *4 for salaried personnel and *5 for hourly personnel to cover benefits, payroll taxes and payroll insurance.

8.2.2. Cost of all materials, supplies, and equipment incorporated in the Project, including costs of transportation and storage thereof.

*2 The actual percentage will be negotiated at the time of GMP acceptance.

*3 The actual percentage of shared savings will be negotiated at the time of GMP acceptance.

*4 The actual percentage will be negotiated at the time of GMP acceptance.

*5 The actual percentage will be negotiated at the time of GMP acceptance.

- 8.2.3. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for their work performed pursuant to subcontracts issued in accordance with this Agreement.
- 8.2.4. Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workmen, which are employed or consumed in the performance of the work.
- 8.2.5. Cost of materials, supplies, equipment, and temporary facilities used but not consumed in the performance of the work and which will be turned over to the Owner at the end of the project.
- 8.2.6. Cost less salvage value on materials, supplies, equipment, and temporary facilities used but not consumed and which remains the property of the Construction Manager.
- 8.2.7. Rental charges consistent with those prevailing in the area on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other. Such rental charges include installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof, which are used in the support of a sub-contractor or the Construction Manager's own forces in the performance of the work.
- 8.2.8. Cost of the premiums for all Project-specific insurance policies and bonds specifically required for the Project.
- 8.2.9. Sales, use, gross receipts or similar taxes paid by the Construction Manager or its subcontractors related to allowable direct costs of the Project imposed by any governmental authority.
- 8.2.10. The cost of corrective work subject, however, to the Project GMP and the provisions of Article 6.2, and except for any corrective work made necessary because of defective workmanship or other causes contributed to by the Construction Manager or its subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Plans and Specifications or applicable construction-related codes or to correct any deficiency or damage caused by negligent acts by the Construction Manager or its subcontractors and suppliers.
- 8.2.11. Costs for trash and debris control and removal from the site.
- 8.2.12. Costs incurred due to an emergency affecting the safety of persons and property.
- 8.2.13. Legal costs reasonably and properly resulting from prosecution of the Project for the Owner, including handling claims for changes by subcontractors and vendors, subject to the following limitations:
 - 8.2.13.1. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - 8.2.13.2. The legal costs and claims were not incurred as result of the Construction Manager's own negligence or misconduct.
 - 8.2.13.3. This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests by Construction Manager for itself, or for contract modifications or in enforcing the obligations of this Agreement.
- 8.2.14. Costs for watchman, security services, and temporary fencing for the Project.

- 8.2.15. Costs for efficient logistical control of the Project site, including horizontal and vertical transportation of materials and personnel, adequate storage, temporary roads and parking space for the Project.
 - 8.2.16. Costs for any Project job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the work.
 - 8.2.17. Cost of providing one set of as-built documents to the Architect. Information on these as-built drawings shall be incorporated into the construction documents by the Architect. The Architect will then produce a Record Set of construction documents on CADD to be issued to the Owner as part of its services to the Owner
 - 8.2.18. Quality Control and Materials Testing.
- 8.3. Excluded Cost Items. Costs which are included in Article 7 are not reimbursable as a Cost of the Project under this Article 8.

ARTICLE 9 CHANGE IN A PROJECT

- 9.1. Contract Modifications. The Owner, without invalidating this Agreement, may order Changes in a Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the Project GMP and the Project Construction Completion Date being adjusted accordingly. Adjustments to the Base GMP or charges to the Owner's contingency shall be in accordance with subarticles 6.2.2.3 through 6.2.2.6. All changes in the Project not covered by an authorized contingency shall be authorized by contract modification signed by the Owner before the change is implemented. Contract modifications may be issued by the Owner on its own initiative or in response to a proposal by the Construction Manager, and shall be subject to the claims process under Article 15.1.
- 9.1.1 A Project contract modification is a written order to the Construction Manager signed by the Owner issued after the execution of the Project GMP, authorizing a Change in the Project, the Construction Manager's fee for the Project, or the Project Construction Completion date. Each charge to the Owner's Contingency or adjustment in the Project GMP resulting from a Project contract modification shall clearly separate the amount attributable to the Cost of the Project. Except when issued in response to a claim pursuant to Article 15.2, a contract modification is subject to a claim for additional cost or time pursuant to Article 9.2. For purposes of Article 15.1.b, the twenty-day period to submit a notice of claim will commence upon issuance of the contract modification. However, no claim may be filed in response to a contract modification issued pursuant to Article 15.2, as the claim will already have been considered.
 - 9.1.2 The increase or decrease in the Cost of the Project resulting from a change in the Project shall be determined in one or more of the following ways, subject to the provisions of Article 8.2.8:
 - a. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Project Administrator, Project Architect/Engineer and Owner;
 - b. by unit prices stated in the Project GMP or subsequently agreed upon;
 - c. by times and materials cost and a mutually acceptable fixed or percentage fee for the

subcontractor; or

d. by the method provided in subarticle 9.1.3.

- 9.1.3 If none of the methods set forth in Article 9.1.2 is agreed upon, the Construction Manager, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a contract modification is issued under these conditions, the Architect/Engineer will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. In such case, and also under Article 9.1.2 above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data of the increase in the Cost of the Project as outlined in Article 8. The amount of decrease in the Project GMP to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost for a Project will be the amount of the actual net decrease.
- 9.1.4 If unit prices are stated in a Project GMP or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed contract modification that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and the Project GMP shall be equitably adjusted.
- 9.1.5 Should concealed conditions encountered in the performance of the Work for a Project below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Plans, Specifications for the Project, or Owner-furnished information, or should unknown physical conditions below the surface of the ground, or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Project GMP and the Project Construction Completion date shall be equitably adjusted by contract modification upon a request for contract modification in accordance with Article 9.2.
- 9.1.6 Increases in the Cost of the Project due to a change in the Project attributable to the Owner, either by Owner's agreement thereto or the grant of a Claim under Article 15, shall either be charged to the Owner's Contingency or result in an increase to the Base GMP, in the sole discretion of the Owner. Decreases in the Cost of the Project due to a change in the Project shall result in a decrease to the Base GMP. If the decrease in the Base GMP is substantial, Construction Manager's Contingency will be decreased proportionately.

9.2 Claims for Additional Cost or Time

Delays that are determined to extend the critical path for the schedule for constructing a Project will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time. All claims for additional cost or time shall be made by request for a contract modification submitted as provided in Article 15.

Project schedule includes inclement weather and holidays and time extensions for any delays resulting from these events will not be considered.

If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner, Project Administrator, an Architect/Engineer, or of any employee of either, or by any separate Construction Manager employed by the Owner, or by any changes ordered in the work by labor disputes, fire, or unusual delay in transportation, unavoidable casualties or any causes beyond

the Construction Manager's control and its subcontractors, or by delay authorized by the Owner pending resolution of disputes and such delay extends the Project Construction Completion Date, the Project Substantial Completion Date shall be extended by contract modification for such reasonable time as the Project Team may determine.

9.3 Minor Changes in the Project

The Project Administrator/Project Architect/Engineer will have authority to order minor changes in a Project not involving an adjustment in the Project GMP or an extension of the Project Construction Completion Date and not inconsistent with the intent of the Plans and Specifications for the Project. Such changes shall be effected by written order. Documentation of changes shall be determined by the Project Team, included in the Project Manual, and displayed monthly in the PMIS. Changes shall be approved by the Project Administrator, and the Project Architect/Engineer.

9.4 Emergencies

In any emergency affecting the safety of persons or property, the Construction Manager shall act at its discretion, to prevent threatened damage, injury, or loss. Any increase in the GMP or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 9.

9.5 Hazardous Waste Removal

The Construction Manager shall or shall cause the removal, encapsulation, transportation and disposal of any hazardous material as may be required in connection with the Work. Hazardous material brought by the Construction Manager or the subcontractors shall remain their responsibility for proper disposal. Any hazardous material not specifically shown on the Contract Documents shall be considered a concealed condition and may be the responsibility of the Construction Manager in a contract modification.

9.6 Force Majeure

9.6.1 A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of a Party's obligations under the Contract Documents, and (ii) is beyond the reasonable control of the Party incurring the delay, and (iii) is not due to an intentional act, error, omission, or negligence of such Party, and (iv) could not have reasonably been foreseen and prepared for by such Party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, sabotage, explosions, embargo restrictions, quarantine restrictions, acts, or failures to act on the part of governmental authorities including changes in the law and court orders, transportation accidents, strikes, floods, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, failure of equipment supplied by Construction Manager, receipt of and incorporation of defective materials into the Work, failure of suppliers to deliver equipment and materials except where such failure is itself the result of a Force Majeure event, or failure of Construction Manager to secure the required permits for prosecution of the Work.

- 9.6.2 If Construction Manager's performance of its Contractual obligations is prevented or delayed by an event believed by Construction Manager to be Force Majeure, Construction Manager shall immediately upon learning of the occurrence of the event or of the commencement of any such delay, but in no case less than three (3) working days thereafter, give to Owner written Notice (i) of the occurrence of the delay; (ii) of the nature of the event and the cause thereof; (iii) of the anticipated impact on the Work; (iv) of the anticipated period of the delay; and (v) of what course of action Construction Manager plans to take in order to mitigate the detrimental effects of the event. Construction Manager's timely delivery to Owner of the Notice of the occurrence of a Force Majeure event is a condition precedent to allowance of an extension of time under this article; however, receipt of such Notice by Owner shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure. The burden of proof of the occurrence of a Force Majeure event shall be on Construction Manager. Failure to give such Notice promptly and within such time limit may be deemed sufficient reason for denial by Owner of any extension of time.
- 9.6.3 If in the opinion of Owner the event was a Force Majeure event, Construction Manager shall be entitled to such extension of time for completing the Project as, in the opinion of Owner, is reasonable and equitable. In determining whether any such extension shall be granted and in determining the length of such extension, Owner may take into consideration any omissions or alterations in the Work or equipment, materials and apparatus required by the Contract Documents whereby, in its opinion, the time necessary for completion has been reduced.
- 9.6.4 The suspension of Construction Manager's performance due to a Force Majeure event shall be of no greater scope and no longer duration than is required. Construction Manager shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event.
- 9.6.5 Construction Manager's obligations that arose before the occurrence of a Force Majeure event causing the suspension of performance shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- 9.6.6 Any extension of time based on an acknowledged Force Majeure event will depend upon the extent to which the delay affects the Construction Schedule and will only extend the scheduled dates for the items of the Work so delayed. Scheduled dates for other portions of the Work not so delayed will remain unchanged. Delays due to Force Majeure events which do not affect the Critical Path of the Construction Schedule will not entitle Construction Manager to an extension of the Final Completion Deadline Date.
- 9.6.7 Construction Manager's sole remedy for the occurrence of a Force Majeure event shall be an extension of time for the activities on the Construction Schedule that are directly delayed by the Force Majeure event.

ARTICLE 10 DISCOUNTS AND PENALTIES

All discounts for prompt payment shall accrue to the Owner to the extent the Cost of a Project is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the Cost of the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of a Project. All penalties incurred due to fault of the Construction Manager or its subcontractors for late payment of cost of a Project will be paid by the Construction Manager and will not be reimbursable as a Cost of the Work.

ARTICLE 11 PAYMENTS TO THE CONSTRUCTION MANAGER

- 11.1 Monthly Statements. The Construction Manager shall submit to the Owner application for payments using AIA forms G702 and G703 along with the cost reports required under Article 2.1 showing in detail for this project all monies paid out, all releases of liens and waivers for subcontractors and suppliers who have been paid, and the amount of the Construction Manager's fees due for that Project as provided in Article 7. Retainage shall be withheld on all payments relating to the construction of a Project at the rate of ten percent (10%) until the construction cost of a Project is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At fifty percent (50%) cost completion, the Owner will reduce the retainage from ten percent (10%) to five percent (5%) on future payments. Additional retainage shall not be withheld on services or fees set forth in Article 7. The Construction Manager's Preconstruction Services Fee or Construction Phase Fee and Overhead and Profit for the Project shall be shown as separate line items on the Schedule of Contract Values for the Project. Payment of the Construction Manager's Overhead and Profit shall be calculated based on approved invoiced amounts for Direct Cost Items under Article 8.2. The billable Construction Phase Fee for a Project will be paid in equal monthly installments, subject to subarticle 7.1.2.1.b. This data shall be attached to the Partial Pay Request prepared individually for this project. Payments by the Owner to the Construction Manager shall be made as described in Article 16.7 upon satisfaction of applicable provisions governing testing, inspection, and acceptance.
- 11.2 Final Payment. Final Payment consisting of the unpaid balance of the Cost of the Project, retainage, and the Construction Manager's fee for a Project shall be due and payable at Final Completion. However, if there should remain work to be completed, the Construction Manager, the Project Administrator, and the Project Architect/Engineer shall list those items prior to receiving Final Payment for the Project and the Owner may retain a sum equal to two hundred percent (200%) of the estimated cost of completing any unfinished work, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, Owner shall pay to Construction Manager monthly the amount retained for each incomplete item after each of said items is completed. Final Payment shall not relieve Construction Manager of any obligation under Contract warranty, guaranty, and indemnification provisions and such other provisions that survive the termination of the Contract.
- 11.3 Payments for Materials and Equipment. Construction Manager may invoice Owner and Owner will pay for expenditures for materials and equipment received on the Project Site or another location prior to being consumed during construction or incorporated into the Work if the equipment and materials are in conformance with the Contract Documents, are received, inventoried and stored properly, Owner approves and accepts the same, and Owner acquires title upon payment therefore. Construction Manager nevertheless retains full responsibility for care, custody, and control of such materials and equipment.

ARTICLE 12
BONDS, INSURANCE, INDEMNITY, AND WAIVER OF SUBROGATION

12.1 Bonds. In accordance with the provisions of Section 255.05, Florida Statutes, the Construction Manager shall submit on Owner forms provided, a 100% Performance Bond and a 100% Labor and Material Payment Bond for this project. Each bond shall be in an amount not less than the total construction cost for the Project as defined in Article 8, and inclusive of the Construction Manager's fees pursuant to Article 7 for the Project. The bonds shall be delivered to Owner within ten (10) calendar days after acceptance of GMP and issuance of Notice to Proceed and shall not expire until expiration of the Warranty Period for the Project. The Construction Manager shall not commence any construction work in connection with a Project until the bonds have been approved by Owner.

To be acceptable as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

- 12.1.1 The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- 12.1.2 The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- 12.1.3 The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- 12.1.4 The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
- 12.1.5 The Surety Company shall have at least an A- policyholder's rating and a Class VII financial rating in the latest issue of Best's Key Rating Guide.

The Surety Company must agree not to expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

- a. Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this article. These minimum requirements shall apply to the reinsuring carrier providing authorization or approvals by the State of Florida, Department of Insurance, to do business in this state have been met.
- b. In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged, or held subject to the consent of the surety and for the protection of the surety shall be deducted.

12.2 Indemnity

12.2.1 The Construction Manager shall indemnify and hold harmless the Owner, agent, and Project Administrator and their agents, officers, and employees from and against all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Construction Manager and all persons employed or utilized by the Construction Manager in the performance of the Work and this Contract. This obligation shall not be construed to negate, abridge, or otherwise reduce any other right to indemnity which would otherwise exist as to any party or person described in this article.

12.2.2 The Construction Manager hereby acknowledges receipt of ten dollars and other good and valuable consideration from the Owner, and acknowledges receipt of ten dollars and other good and valuable consideration from the Project Administrator, for giving the Owner and Project Administrator, respectively, the indemnification provided in this article.

12.3 Construction Manager's Insurance

12.3.1 Unless otherwise specified, Construction Manager shall, at its own expense, carry and maintain the following minimum insurance, as well as any insurance coverage required by law.

12.3.1.1. Worker's Compensation Insurance and Employer's Liability Insurance with a lower limit of \$1,000,000 per occurrence, including, without limitation, coverage for Occupational Diseases, to provide for the payment of benefits to its employees employed on or in connection with the Work covered by this Agreement and/or to their dependents, including, without limitation, and to the extent applicable, the U.S. Longshoremen's and Harbor Workers' Compensation Act and the Jones Act.

12.3.1.2. Broad Form Commercial General Liability Insurance (on an occurrence basis), including but not limited to: (a) Completed Operations and Products Liability Insurance for at least two (2) years following the Final Acceptance Date of the Work; (b) Blanket Contractual Liability; (c) Owner's and Construction Manager's Protective Liability; (d) Personal Injury Liability; (e) XCU Coverage; (f) Protection and Indemnity Coverage; and (g) Aviation/Aircraft Liability Coverage (including passengers and crew), with a minimum combined single limit for bodily injury, including death, of at least \$5,000,000 per occurrence and for property damage (broad form) of at least \$5,000,000 per occurrence.

12.3.1.3. Automobile Liability Insurance with minimum bodily injury and death limits of \$1,000,000 for any one (1) person and \$1,000,000 per accident, and a minimum property damage limit per accident of \$1,000,000.

12.3.1.4. Excess or Umbrella Liability Insurance shall have an aggregate limit of \$10,000,000 for each occurrence and annual aggregate when combined with the Automobile Liability and Commercial General Liability coverage above. The Excess or Umbrella Liability Coverage shall be no more restrictive than the primary Automobile and Commercial General Liability policies listed above.

12.3.1.5. In the event that the Scope of Work includes professional design services for elements of the Work that will become permanently incorporated into the Work and the Project, Professional Liability Insurance having limits of \$1,000,000 for each claim and \$1,000,000 annual aggregate. Such insurance shall remain in full force and effect during the term of the Contract and shall remain in effect for a period of six (6) years following Final Completion of the Work or the end of the Project, whichever occurs last.

12.3.2 The Construction Manager shall likewise require its subcontractors to provide for such benefits and carry and maintain such insurance at no expense to the Owner with the exception that certain limits and benefits may be reduced for subcontractors to coincide with industry standards and Construction Manager's requirements as stipulated by Construction Manager.

12.3.3 Owner and Project Administrator and their respective successors and assigns shall be named as "Additional Insureds" on all policies.

- 12.3.4 All policies shall provide a severability of interests or a cross-liability clause. All insurance shall be primary to any insurance carried by the Additional Insureds and not in excess to or contributing with any insurance or self-insurance maintained by any Additional Insured.
- 12.3.5 All policies shall provide for a waiver of subrogation against the Additional Insureds, their subsidiaries, affiliates, employees, insurers and underwriters, and a waiver of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy. Exception: For subcontractors, the waiver of subrogation will be provided for workers compensation insurance only.
- 12.3.6 All policies shall be underwritten by carrier(s) rated A- or better by Best's Insurance Guide, and which are authorized and admitted to underwrite such insurance contracts in the jurisdiction within which the jobsite is located.
- 12.3.7 All policies required by this article shall be written for and dedicated to the Work.
- 12.3.8 Before any of Construction Manager's or its subcontractors' employees shall do any work at the jobsite, Construction Manager shall submit to Owner a certificate or certificates of insurance evidencing that such benefits have been provided and that such insurance is being carried and maintained. Such certificates shall stipulate that the insurance will not be canceled or materially changed without thirty (30) days prior written notice by certified mail to Owner, and shall also specify the date when such benefits and insurance expire. Construction Manager agrees that such benefits shall be provided and such insurance carried and maintained until Final Acceptance of the Work.
- 12.3.9 Such benefits and such coverage as are required herein, or in any other document to be considered a part hereof, shall not be deemed to limit Construction Manager's liability under this Agreement.
- 12.3.10 Builder's Risk Coverage. The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form as a cost of the Project, issued to provide coverage on an "all risk" basis including theft. This coverage shall not be lapsed or cancelled because of partial occupancy by the Owner prior to final acceptance of a Project.
- 12.3.11 Certificate of Insurance. The Owner shall be furnished proof of coverage for each type of insurance as follows:
- 12.3.11.1. Certificate of Insurance form will be furnished to the Owner along with the executed Agreement. These shall be completed and signed by the authorized Florida Resident Agent, and returned to the office of Project Administrator. This Certificate shall be dated and show:
- a. The name of the insured Construction Manager, the specific Project by name and Project number, the name of the insurer, the number of the policy, its effective date, and its termination date.
 - b. Statement that the Insurer will mail notice to the Owner and a copy to the Project Administrator at least fifteen (15) days prior to any material changes in provisions or cancellation of the policy.
 - c. Certificate of Insurance shall be in the form as approved by Insurance Standards Office (ISO) and such certificate shall clearly state all the

coverages required in accordance Article 12.3.

- d. Certificate of Insurance shall state that the Owner, agent, and Project Administrator are listed as additional insured on all appropriate policies.
- e. Copy of the endorsement or additional insured rider to the General Liability Policy.
- f. Date of birth of authorized Resident Agent.

12.4 Waiver of Subrogation

- 12.4.1 The Owner, Project Administrator, and the Construction Manager waive all rights against each other for damages caused by perils covered by insurance provided under Article 12.3 to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance held by the Owner, Project Administrator, and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
 - 12.4.2 The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
 - 12.4.3 The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
 - 12.4.4 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed Failure to obtain proper endorsement nullifies the waiver of subrogation.
- 12.5 OCIP or CCIP. Owner may elect to implement an Owner Controlled Insurance Project (OCIP) designed to encompass the insurance requirements of this subarticle. Any Contractor Controlled Insurance Project (CCIP) implemented by Construction Manager will be subject to agreement by the parties and shall encompass the requirements of this subarticle.

ARTICLE 13 SUSPENSION OF WORK; TERMINATION OF THE AGREEMENT; OWNER'S RIGHT TO PERFORM CONSTRUCTION MANAGER'S OBLIGATION

- 13.1 Suspension of Work by Construction Manager. If the Owner should fail to pay the Construction Manager within forty-five (45) days after Owner's approval of a payment request from the Construction Manager, then the Construction Manager may, upon seven (7) additional days written notice to the Owner, Project Administrator, and the Project Architect/Engineer, stop the applicable Project until payment of the amount owing has been received.

13.2 Suspension of Work by Owner

13.2.1. For Cause. Upon the failure of Construction Manager or its subcontractors or suppliers to comply with any of the requirements of this Agreement or any Project Agreement, including but not limited to Construction Manager's failure to maintain proper safety precautions, Owner shall have the authority to stop any of the Work affected by such failure until such failure is remedied. In the event of the issuance of a Stop Work Order by Owner, Owner shall not be liable for any costs or expenses claimed by Construction Manager arising out of such issuance and the Construction Schedule shall not be delayed or extended as a result of such issuance.

13.2.1.1. Upon receipt of any such Notice, Construction Manager shall, unless the Notice requires otherwise:

- a. Immediately discontinue work on the date and to the extent specified in the Notice;
- b. Place no further orders or subcontracts for material, services, or facilities with respect to the suspended Work other than to the extent required in the Notice;
- c. Promptly make every reasonable effort to obtain suspension upon terms satisfactory to Owner of all orders, subcontracts, and rental agreements to the extent they relate to performance of the Work suspended; and
- d. Continue to protect and maintain the Work, including those portions on which work has been suspended.

13.2.1.2. Upon receipt of Notice to resume suspended Work, Construction Manager shall immediately resume performance of the suspended Work to the extent required in the Notice.

13.2.2. Without Cause. By Notice in writing to Construction Manager, Owner may suspend at any time, at its sole option and for any reason including convenience, the performance of all or any portion of the Work to be performed under the Project Agreement. Upon such Notice of Suspension of the Work, Owner will designate the amount and type of plant, labor, and equipment to be committed to the work site during the period of suspension. Construction Manager shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with such suspension.

13.2.2.1. The Construction Manager shall comply with Articles 13.2.1.1 through 13.2.1.2.

13.2.2.2. As full compensation for such suspension, Construction Manager will be reimbursed for the following costs, without duplication of any item, to the extent that such costs were reasonably incurred and directly result from such suspension of the Work:

- a. A standby charge to be paid to Construction Manager during the period of suspension of the Work, which standby charge shall be sufficient to compensate Construction Manager for keeping, to the extent required in the Notice, its organization and equipment committed to the Work in a standby status;

- b. All reasonable costs, as determined to be equitable by Owner, associated with demobilization and subsequent remobilization of Construction Manager's plant, forces, and equipment; and
- c. An equitable amount to reimburse Construction Manager for the cost of maintaining and protecting that portion of the Work upon which work has been suspended.
- d. Any claim on the part of Construction Manager for such compensation shall be made within ten (10) working days after receipt by Construction Manager of a Notice to suspend the Work.

13.2.2.3. If, as a result of any such suspension of the Work, the cost to Construction Manager of subsequently performing the Work is increased or decreased, an equitable adjustment will be made in the cost of performing the suspended Work in accordance with Subarticle 9.1.2. Any claim on the part of Construction Manager for additional time or compensation shall be made within ten (10) working days after receipt of Notice to resume the Work, and Construction Manager shall submit a revised Construction Schedule for review and approval by Owner.

13.2.3. In the event such suspension continues for more than ninety (90) calendar days, Owner may release to Construction Manager, for the Work satisfactorily completed by Construction Manager, approved, and accepted by Owner, any amounts retained by Owner under the terms of the Project Agreement. Such retention shall only be released to Construction Manager after Construction Manager's complete compliance with the suspension notice and the requirements of the Contract Documents.

13.2.4. No compensation or extension of time will be granted if suspension results from Construction Manager's noncompliance with any requirements of the Contract Documents.

13.3 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause

13.3.1 If the Construction Manager fails to perform any of its obligations under this Agreement with respect to any Project including any obligation he assumes to perform Work with its own forces, the Owner may, after seven (7) days written notice during which period the Construction Manager fails to commence correction of such obligation, make good such deficiencies. The Project GMP or the actual cost of the Project, whichever is less, shall be reduced by the actual cost to the Owner of making good such deficiencies, and the Construction Manager's Construction Phase fee for such Project shall be reduced by an amount required to manage the making good of such deficiencies, without limiting the Owner's other remedies under this Agreement.

If the Construction Manager is adjudged a bankrupt, or if he makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if the Construction Manager persistently or repeatedly refuses or fails, except in a case for which extension of time is provided, to supply enough properly skilled workers or proper materials for any Project and fails to maintain an established Project schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls forty-five (45) days or more behind schedule) which has been adopted by the Project Team, or if any representation made by Construction Manager herein was false or materially misleading when made, or the merger, acquisition, sale or transfer of assets of Construction Manager occurs which has a material adverse effect on Construction Manager's net worth or on Construction Manager's

ability to meet its obligations under this Agreement or any Project Agreement or results in the assumption of this Agreement or any Project Agreement by any other person, in any case without the prior written consent of Owner, or if Construction Manager fails to make prompt payment to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or fails to provide required insurance coverage, or if such insurance coverage are canceled, terminated, or modified so that the required insurance coverage are no longer in full force and effect, or fails to furnish the required performance and payment bond, or otherwise is guilty of a substantial violation of a provision of the Agreement, then the Owner may, without prejudice to any right or remedy and after giving the Construction Manager and its surety, if any, seven (7) days written notice, during which period Construction Manager fails to commence correction of the violation, terminate the employment of the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager, and may finish the Project by whatever method the Owner may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished, nor shall it be relieved from its obligations assumed under Article 6. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work), without limiting the Owner's other remedies under this Agreement.

- 13.3.2 If the Construction Manager refuses to allow public access to all documents, papers, letters, or other material subject to the inspection provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement, then, as stated in 16.8 Compliance with Laws, a., failure by the Construction Manager to grant such public access shall be grounds for immediate unilateral cancellation of the Agreement by the Owner. The Owner may terminate the employment of the Construction Manager and take possession of the Project sites and of all materials, equipment, tools, construction equipment, and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method the Owner may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable terminal expenses incurred by the Owner may be deducted from any payments left owing the Construction Manager (excluding monies owed the Construction Manager for subcontract work).

13.4 Termination by Owner without Cause

- 13.4.1 If the Owner terminates this Agreement other than pursuant to Article 13.3 with respect to this Project as a whole, the Owner shall reimburse the Construction Manager for any unpaid Cost of the Project or impacted due it under Article 9, plus that part of the unpaid balance of the Construction Phase Fee for the impacted Project in an amount as will increase the payment on account of its fee to a sum which bears the same ratio to the Construction Phase fee as the Cost of the Project at the time of termination bears to the Project GMPs, if established, otherwise to the Owner's Project Construction Budgets. The Owner shall also pay to the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained, as well as move-out and demobilization costs. In case of such termination of Agreement, at the sole discretion of the Project Administrator, the Owner may require the Construction Manager to assign to the Owner any unsettled contractual claim for which performance of the work and nonpayment by the Owner can be, in the sole discretion of the Project Administrator, properly documented. The Construction Manager may, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights as requested by the Owner, or as the Owner may require

for the purpose of fully vesting the rights and benefits of the Construction Manager under such obligations or commitments.

- 13.4.2 After the establishment of a Project GMP or at the completion of the Preconstruction Services for a Project, if the final cost estimates or lack of legislative funding make a Project no longer feasible, such determination being at the sole discretion of the Owner, the Owner may terminate this Agreement and pay the Construction Manager its proportionate fee due in accordance with Article 7.1 plus any costs incurred pursuant to Articles 8 and 9, and no fees for activities not yet undertaken or authorized by the Owner shall be paid.
- 13.4.3 The payments to Construction Manager pursuant to the foregoing articles shall be the sole right and remedy of Construction Manager upon any such termination and Construction Manager shall have no claims for damages, including loss of anticipated profits on account of termination.
- 13.4.4 Upon receipt of a notice of termination, Construction Manager and its subcontractors shall, unless the Notice requires otherwise:
 - 13.4.4.1. Immediately discontinue the Work or portions thereof that can be discontinued without creating a hazardous condition, on the date and to the extent specified in the Notice.
 - 13.4.4.2. Cancel all outstanding commitments for labor, materials, equipment, and apparatus on the terminated portion of the Work that may be canceled without undue cost. Construction Manager shall notify Owner of any commitment that cannot be canceled without undue cost and Owner shall have the right to accept delivery or to reject delivery and pay the agreed upon costs;
 - 13.4.4.3. Place no further orders or Contracts for labor, materials, services, or facilities, other than as may be necessary or required for completion of such portion of the Work under the Project that is not terminated;
 - 13.4.4.4. Assist Owner, as specifically requested in writing, in the maintenance, protection, and disposition of property acquired by Owner under the Project Agreement.
- 13.5 Termination by the Construction Manager. If the Project in its entirety is stopped for a period of one hundred twenty (120) days under an order of any court or other public authority having jurisdiction or as a result of an official act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, its agents employees, subcontractors or suppliers, and Owner and Construction Manager are unable to reach agreement concerning compensation to Construction Manager during the suspension and other material matters concerning the status of the Project during the period of suspension, then with respect to any impacted Project the Construction Manager may, upon thirty days written notice to the Owner, terminate the project and request payment for all Work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment, and machinery, including reasonable profit, damages and terminal expenses incurred by the Construction Manager. This provision does not apply to circumstances described in Article 1.7.

ARTICLE 14 ASSIGNMENT AND GOVERNING LAW

- 14.1. Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other, except as to the assignment of proceeds. Notwithstanding the foregoing, Owner may assign its interest in this Agreement or any portion thereof to any local or state governmental body, special taxing district, or any person authorized by law to construct or own the Project. Such assignee shall be bound to comply with the terms of this Agreement.
- 14.2. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any other law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision.
- 14.3. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- 14.4. In any legal action related to this Agreement, instituted by either party, Construction Manager hereby waives any and all privileges and rights it may have under Chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate court in any county chosen by the Owner and in the event that any such legal action is filed by the Construction Manager, Construction Manger hereby consents to the transfer of venue to the county chosen by the Owner upon the Owner filing a motion requesting the same.

**ARTICLE 15
NOTICE OF CLAIM: WAIVER OF REMEDIES**

- 15.1. The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages, or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
 - a. All claims must be submitted as a Request for Contract Modification in the manner as provided herein;
 - b. The Construction Manager must submit a Notice of Claim to Owner, Project Administrator, and to the applicable Project Architect/Engineer within twenty (20) days of when the Construction Manager became aware of the occurrence of the event giving rise to the claim; and
 - c. Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner/Project Administrator its Request for Contract Modification, which shall include a written statement of all details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to timely submit as a Request for contract modification as provided in this paragraph.

Claims may be submitted in response to a contract modification issued by the Owner on its own initiative or in response to a proposal by the Construction Manager, but not in response to a contract modification issued pursuant to Article 15.2.

- 15.2. After receipt of a Request for Contract Modification, the Owner, in consultation with the Project Administrator and the applicable Project Architect/Engineer, shall deliver to the Construction Manager its written determination of the claim and issue any corresponding contract modification. The provisions of Article 15 shall be employed during this process. As to matters subject to the determination by final agency action (not actions for breach of contract or tort) the Owner's written

decision shall be final agency action unless the Construction Manager requests an administrative proceeding pursuant to Section 120.57, Florida Statutes, by filing a petition in compliance with Rule Chapter 28-106, Florida Administrative Code, within twenty-one (21) days of the Construction Manager's receipt of the Owner's determination.

- 15.3. For work the Construction Manager performs with its own forces, pursuant to the 4.1 exception, with the approval of the Owner, and in addition to the adjustments provided for in Article 7, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner, Project Administrator or the Project Architect/Engineer, and including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 14.1, above, and be limited to an extension of the scheduled construction time and actual costs, pursuant to Article 8.2. If such event results in a Change in the Work, the Construction Manager's sole remedy is a claim for adjustments in the contract sum, limited exclusively to its actual costs for such changes. The Construction Manager expressly agrees that the foregoing constitute its sole and exclusive remedies for delays and changes in such work, and waives any other remedies for any claim for increase in the contract price, delays, changes in the work, damages, losses, or additional compensation.

ARTICLE 16 MISCELLANEOUS

- 16.1. Harmony. Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by Construction Manager and its subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by other contractors now or hereafter on the site of the Project. Construction Manager further agrees that this provision will be included in all subcontracts of the subcontractors as well as the Construction Manager's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.
- 16.2. Apprentices. If the Construction Manager employs apprentices on the Project, the behavior of the Construction Manager and the Owner shall be governed by the provisions of Chapter 446, Florida Statutes, and by applicable standards and policies governing apprentice Project and agreements established by the Division of Workforce Development of the State of Florida Department of Education. The Construction Manager will include a provision similar to the foregoing sentence in each subcontract.
- 16.3. Invoices. Invoices shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof. Invoices for any travel expenses authorized by Owner shall be submitted in accordance with procedures specified in Section 112.061, Florida Statutes, governing payments by the State for travel expenses.
- 16.4. Construction Manager's Project Records. The Construction Manager's Project Records shall be maintained as prescribed hereinabove in accordance with the State of Florida General Records Schedule for State Agencies A-1, and shall be made available to the Owner or its authorized representative at upon request. Construction Manager shall maintain records, books, files, correspondence, documents, receipts, vouchers, invoices, memoranda, and similar data relating to the work performed under this Agreement and all Project Agreements (hereinafter collectively called the "Records") in a proper business-like fashion, conforming to accepted accounting principles, and in such detail as will properly and accurately reflect the Work performed under this Agreement and all Project Agreements, as well as the costs thereof.

- 16.4.1. Owner and/or its authorized representative shall have the right, at any time, to examine and make copies of all records.
- 16.4.2. Construction Manager shall preserve and make available to Owner and/or its authorized representative all Records for a period of five (5) years from the date of Final Payment, termination settlement, or until the conclusion of any claim, litigation or appeal, whichever is longer; or for such longer period, if any, required by Applicable Law or regulation.
- 16.4.3. At Owner's expense, Owner or an independent certified public accountant designated by Owner shall have the right to audit, copy and inspect said records and accounts at all reasonable times during the course of such Work and for the above five (5) year period.
- 16.5. Technical Proposal. The Construction Manager acknowledges that it was selected for this Agreement in part by the proposed approaches and plans submitted as part of its Technical Proposal. The Construction Manager agrees to provide its services under this Agreement at a level not inferior to that referenced in its Technical Proposal.
- 16.6. Dispute Resolution. The parties agree to make a diligent, good-faith effort to attempt to amicably resolve all disputes arising under or relating to this Agreement, the Project thereunder by conference and negotiations and in the following manner:
 - 16.6.1. The Jobsite Managers of Owner and Construction Manager shall use their best efforts to settle the dispute within fifteen (15) calendar days from submission of a claim pursuant to Article 15.1.
 - 16.6.2. If unresolved in said fifteen (15) day period, the Project Administrator of Owner and Construction Manager or equivalent level person shall use their best efforts to settle the dispute within fifteen (15) days of their receiving it from their respective Site Managers.
 - 16.6.3. If unresolved in said second fifteen (15) day period, Senior Management of both parties shall use their best efforts to settle the dispute within fourteen (14) days. For the purposes of this Agreement, Senior Management is defined as that level of Corporate Management one (1) or more levels senior to the Project Administrator/Manager to whom the Project Administrators/Manager are accountable functionally and administratively.

16.7 Construction Manager's Compensation and Payment

Reference herein to the "Vendor" shall mean the Construction Manager. Reference herein to the "Contract Manager" means the Owner's designated employee who is responsible for enforcing performance of the contract terms and conditions and to serve as a liaison with the Construction Manager as stated in 287.057 (14) Florida Statutes. Owner shall identify for the Construction Manager the Owner's Contract Manager.

- a. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes.

Deliverables must be received and accepted in writing by the Owners on the Owner's directed invoice transmittal forms prior to payment.

- b. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager to approve payments.
- c. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre audit and post audit thereof.

- d. The bills for any travel expenses, when authorized by terms of this Agreement and by the Owner's Contract Manager, shall be submitted in accordance with Section 112.061, Florida Statutes, and Chapter 3: Travel, Department's Disbursement Operations Manual, 350-030-400.
- e. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Owner.
- f. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- g. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Owner at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Owner upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subcontractors performing work on the project, and all other records of the Vendor and subcontractors considered necessary by the Owner for a proper audit of project costs.
- h. The Owner, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subarticle is null and void, and no money may be paid on such contract. The Owner shall require a statement from the comptroller of the Owner that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Owner's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

16.8 Compliance with Laws

- a. The Construction Manger shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Construction Manager in conjunction with this Agreement. Specifically, if the Construction Manager is acting on behalf of a public agency the Construction Manager shall:
 - 1) Keep and maintain public records that ordinarily and necessarily would be required by the Owner in order to perform the services being performed by the Construction Manager
 - 2) Provide the public with access to public records on the same terms and conditions that the Owner would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - 3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
 - 4) Meeting all requirements for retaining public records and transfer, at no cost, to the Owner all public records in possession of the Construction Manager upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from

public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with the information technology systems of the Owner.

Failure by the Construction Manager to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Owner. The Construction Manager shall promptly provide the Owner with a copy of any request to inspect or copy public records in possession of the Construction Manager and shall promptly provide the Owner with a copy of the Construction Manager's response to each such request.

- b. The Contractor Manager agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Engineer and securing the Department's prior written consent.
- c. The Construction Manager shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- d. If the Construction Manager is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then Section 337.162, Florida Statutes, applies as follows:
 - 1) If the Owner has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
 - 2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
 - 3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to Chapter 455, Florida Statutes, and applicable state law.
- e. The Construction Manager covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Construction Manager further covenants and agrees that when a former state employee is employed by the Construction Manager, the Construction Manager shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Construction Manager agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- f. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or rely on a contract with a public entity

for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

- g. An entity or affiliate placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact business with any public entity.
- h. The Owner shall consider the employment by any contractor of unauthorized aliens a violation of Section 274 A (e) of the Immigration and Nationality Act. If the Construction Manager knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- i. Pursuant to Section 216.347, Florida Statutes, the Construction Manager may not expend any state funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.
- j. The Construction Manager agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Owner and securing the Owner's prior written consent.

16.9 E-Verify

a. Construction Manager:

- 1) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Construction Manager during the term of the Agreement; and
- 2) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

16.10 The Construction Manager and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Construction Manager and its employees, agents, representatives, or subcontractors are not agents of the Owner or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Owner or the State. The Owner shall not be bound by any unauthorized acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. Contractor agrees to include this provision in all its subcontracts under this Agreement.

16.11 Consequential Damages. Except for those damages specifically recoverable by the Owner or Construction Manager as set forth elsewhere in this Agreement, including but not limited to any provision for liquidated damages or any damages under this Agreement, neither Owner nor Construction Manager shall be liable to the other, whether such liability arises out of contract, tort (including negligence), strict liability or any other cause or form of action whatsoever, for any consequential, special, indirect, or incidental damages including, but not limited to, lost profits, loss of anticipated profits, lost revenue or loss of use of the Project, or any other special, incidental, indirect or consequential loss or damage of any

nature arising out of or in connection with the Construction Manager, other than special, incidental, indirect or consequential loss or damage resulting from the willful misconduct of Owner or Construction Manager.

16.12. Patents, Trademarks, and Copyrights

- 16.12.1. Construction Manager shall grant to Owner an assignable, irrevocable, nonexclusive, royalty-free license, for use in connection with operation, maintenance, repair or alteration of the Work or any portion thereof, with respect to any invention based wholly or in part on or derived from proprietary information received from Owner and conceived or first reduced to practice by Construction Manager, its employees or agents during the course of the Work.
- 16.12.2. Construction Manager further agrees to grant and hereby grants to Owner an assignable, irrevocable, nonexclusive, royalty-free license, under all patents, trademarks, copyrights, trade secrets and similar rights now or hereafter owned or controlled by Construction Manager, to the extent necessary for the operation, maintenance, repair or alteration of the Work or any unit or component thereof designed, specified or constructed by Construction Manager under this Agreement.
- 16.12.3. Construction Manager further agrees to secure from all subcontractors, suppliers and others, and convey to Owner, all licenses and other rights to use all patents, trademarks, copyrights, trade secrets and similar rights associated with the Work, to the extent necessary for the operation, maintenance, repair or alteration of the Work or any unit or component thereof designed, specified or constructed by Construction Manager under this Agreement.
- 16.12.4. Plans, prints, technical documents, and data prepared or developed by Construction Manager, subcontractors or Suppliers and furnished to Owner in the performance of the Work shall be the property of Owner and may be used by Owner without restriction. Owner shall have the right to reproduce any and all plans, prints, technical documents or other data received from Construction Manager that are considered necessary for engineering, construction, start-up, commissioning, maintenance, or other purposes related to the Project, despite any notice to the contrary appearing on the document.
- 16.12.5. Construction Manager shall, at Construction Manager's own expense, defend all suits or proceedings instituted against Owner through counsel selected by Construction Manager and reasonably satisfactory to Owner, and shall fully indemnify and hold Owner harmless and otherwise pay any award of damages and all costs (including, but not limited to court costs and attorney's fees) assessed against the Owner, in such suits or proceedings, insofar as the same are based on (i) any claim that the material, equipment, apparatus, or other item furnished under this Agreement or a Project Agreement or any part thereof constitutes an infringement of any United States patent, trademark or copyright, or (ii) any claim that the performance of the Work by Construction Manager, including the use of tools, implements or construction constitutes an infringement of any United States patent, trademark or copyright; provided that Owner shall give to Construction Manager prompt notice in writing of the institution of any such suit or proceeding and shall furnish Construction Manager (at Construction Manager's expense) all needed information, authority, and assistance to enable Construction Manager to defend the same.
If such material, equipment, apparatus, or other item is in any such suit or proceeding held to constitute infringement and its use is enjoined, Construction Manager, within a reasonable time, shall either secure for Owner at Construction Manager's own expense, the right to continue using said material, equipment, apparatus or other item by suspension of the injunction or by procuring for Owner a license to use the infringing material, equipment, apparatus, or other item. In lieu of the foregoing, Construction Manager at its own expense and as the Owner may elect shall replace such material, equipment, apparatus

or other item with non-infringing material, equipment, apparatus or item or shall modify it so that it becomes non-infringing.

The ultimate remedy shall be without damage or injury to any other property of Owner and shall be at Construction Manager's sole expense.

- 16.13. Publicity. Construction Manager shall not engage in any advertising, publicity, or other promotional activities that in any way directly or indirectly mentions or refers to this Agreement, the relationship between the parties created thereby or the services and material furnished there under, without obtaining the prior written consent of Owner. Construction Manager shall not display any signs, posters, or other advertising matter in or on any part of the Work without specific written approval of Owner.
- 16.14. Survival of Provisions. In order that the Parties to this Agreement may fully exercise their rights and perform their obligations hereunder arising from the performance of the Work, any provisions of this Agreement that are required to ensure exercise of such rights or performance shall survive termination of this Agreement regardless of the cause for such termination and regardless of whether or not such termination applies to all or only part of the Agreement.
- 16.15. Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision. In the event any such provision of this Agreement is declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect.
- 16.16. No Waiver. No waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of this Agreement by either party at any time shall in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding.
- 16.17. Prison Rehabilitative Industries and Diversified Enterprises (PRIDE). Per Section 945.515(2), Florida Statutes, no similar article of comparable price and quality found necessary for use by any state agency may be purchased from any other source when the Prison Rehabilitative Industries and Diversified Enterprises (PRIDE) certifies that the same is available and can be furnished by PRIDE. The purchasing authority of any such state agency shall have the power to make reasonable determinations of need, price, and quality with reference to articles available for sale by such correctional work programs. The Contractor, or its subcontractor, shall procure materials and commodities, where available from PRIDE, in the same manner and under the same procedures as required for the Owner under Section 946.515(2), Florida Statutes.
- 16.18. Preference to home industries in building public buildings. Comply with Florida Statute 255.04 which requires that Florida products and labor shall be used on public building contracts where price and quality are equal.
- 16.19. Preference to State Residents. Florida Statutes 255.099, providing for preference to residents of the Statute of Florida, is hereby made a part of this Contract. Each contract for construction that is funded by state funds must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work on the project if state resident have substantially equal qualifications to those of nonresidents. Follow the provisions of 255.099 Florida Statute as stated in that statute.

16.20 Drug-Free WorkPlace.

Each construction contractor regulated under Part I of Chapter 489, and electrical contractor or alarm system contractor regulated under Part II of Chapter 489, who contracts to perform construction work under a state contract for public property or public owned buildings governed by Chapter 255 must implement a drug-free workplace program as required by Section 440.102(15), Florida Statutes. The Contractor represents, covenants, and warrants that it has implemented a drug-free workplace program in accordance with the standards and procedures established in Section 440.102, Florida Statutes. This requirement applies to contracts entered into on or after October 1, 2002.

16.21 Scrutinized Vendors

For Agreements \$1,000,000 and greater, if the Department determines that the Construction Manager submitted a false certification under Section 287.135 (5), Florida Statutes, been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall either terminate the Agreement after it has given the Construction Manager notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135 (5) (a), Florida Statutes, or maintain the Agreement if the conditions of Section 287.135 (4), Florida Statutes, are met.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

(Name of Construction Manager)

By: _____
(Authorized Signature)

Name: _____
(Print/Type)

Title: _____

Attest: _____

Name: _____
(Print/Type)

Title: Corporate Secretary

(Corporate Seal)

By: _____
(Authorized Signature)

Name: Alan E. Hyman, P.E.
(Print/Type)

Title: Director of Transportation Operations
District Five

Attest: _____

Name: Norma Mejias

Title: Executive Secretary

FOR DEPARTMENT USE ONLY

APPROVED:

LEGAL APPROVAL

Contractual Services Office

EXHIBIT A

PROJECT TEAM ASSIGNED REPRESENTATIVES

Florida Department of Transportation

DCE Name - District Construction Engineer

RE Name - Resident Engineer
Email Address

Project Administrators Name - FDOT Project Administrator - Civil
Email Address

Project Administrator Name - FDOT Project Administrator - Architectural
Email Address

Name - FDOT Quality Initiatives
Email Address

Name - FDOT Design Representative
Email Address

Name - FDOT Procurement Director
Email Address

Name - FDOT District Maintenance Representative
Email Address

EXHIBIT B

PROJECT NAME AND CONSTRUCTION SCOPE ITEMS

1. Project Name: Cocoa-Brevard Operations Center
2. Project Location: Brevard County at 555 Camp Road, Cocoa, Florida

3. Project Description and Work Definition: The Owner's intent is to design and construct a new modern operations center on the site of the present Brevard Operations Complex. The site is approximately 30 acres and the new facility will encompass the entire currently occupied site. The facility will need to be built in phases that will allow the existing installation to remain active. The Owner has retained AECOM who will serve in the capacity of Design Consultant for the proposed facility and has prepared a Basis of Design attached as Exhibit J.

Site development includes demolition of buildings and site amenities/infrastructure, selective clearing of trees, site grading, construction of drainage structures including retention area, all utilities, extensive paved parking areas (both concrete and asphalt) and roadways, sidewalks, security fencing, and other miscellaneous site structures. The demolition activities will include the removal, handling, and disposal of regulated materials including asbestos-containing materials and lead based paint, along with components of air conditioning equipment, water coolers, thermostats, and lighting.

Proposed buildings and structures include Administration Building, Vehicle Repair Shop/Warehouse, Crew Building, Equipment Storage, Vehicle Wash and Vehicle Rinse, material bins, and various concrete slabs for miscellaneous structures. Existing vehicle refueling station is to remain and is to be refurbished.

4. Construction Scope Items: In addition to documents referenced in this Agreement, Plans and Building Technical Specifications prepared by URS/AECOM and dated dd/mm/yyyy are hereby attached by reference as follows:
 - a. Plans
Sheet Number
 - b. Building Technical Specifications

EXHIBIT C

PRECONSTRUCTION AND CONSTRUCTION PHASE PERSONNEL

Construction Manager's Name

Staff Name

Principal
Senior Project Manager
Asst. Project Manager
Estimator
Administrative Assistant
Project Accountant
Project Superintendent

The Owner, for the performance of specific pre-construction duties, will approve other personnel on a case-by-case basis, for a specific period of time.

EXHIBIT D

GUARANTEED MAXIMUM PRICE (GMP) AMENDMENT

(GMP AMENDMENT NO. 1)

GMP AMENDMENT NO. 1

Pursuant to the Agreement dated _____, between the Florida Department of Transportation, District Five (“Owner”) and _____ (“Construction Manager”), with respect to the construction of the Cocoa-Brevard Operations Center (“Project”), the Owner and Construction Manager hereby agree to amend and modify the Original Agreement by this Amendment and establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below:

SECTION 1

SCOPE OF WORK

The Scope of the Work covered by this GMP Amendment No. 1 consists of the construction of the Cocoa-Brevard Operations Center, in accordance with the original Agreement, this Amendment and the other Contract Documents listed as Attachment No. 1 below, are hereby incorporated into and made a part of the Amendment by this reference:

Attachment No. 1

| <u>Description</u> | <u>Pages</u> | <u>Date</u> |
|--|-----------------|-------------|
| A. List of Drawings | ___ through ___ | _____ |
| B. List of Building Technical Specifications | ___ through ___ | _____ |
| C. List of Addenda | ___ through ___ | _____ |

SECTION 2

GUARANTEED MAXIMUM PRICE

2.1 Construction Manager's Guaranteed Maximum Price ("GMP") for Scope as defined above, including the estimated Cost of the Work as defined in Article 8 of the Agreement and Construction Manager's Fee as defined in Article 7 of the Agreement , all as detailed in the approved GMP proposal, is _____ (\$ _____) and in accordance with attached detailed Schedule of Values.

2.2 The Construction Manager's Fee for the Work covered by GMP is hereby established as a lump sum amount of _____ (\$ _____), said lump sum amount shall be based on a negotiated percentage of the GMP. Said lump sum is included in the above GMP.

2.3 The parties agree to establish a Construction Manager's Contingency within the GMP in an amount of _____ (\$ _____) said lump sum amount shall be based on a negotiated percentage of the GMP. Said lump sum is included in the above GMP.

2.4 The parties agree to establish an Owner's Contingency within the GMP in an amount of _____ (\$ _____) said lump sum amount shall be based on 5 percentage of the GMP. Said lump sum is included in the above GMP.

SECTION 3

CONTRACT TIME

3.1 The Construction Phase Commencement Date for the Work shall be the Notice to Proceed date, which shall be _____. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is _____ (_____) days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS, THEREFORE, ESTABLISHED AS _____.

Owner

Construction Manager

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

EXHIBIT E

CONSTRUCTION MANAGER CONTINGENCY TRANSFER AUTHORIZATION

**COCOA-BREVARD OPERATIONS CENTER
CONSTRUCTION MANAGER CONTINGENCY TRANSFER AUTHORIZATION**

CCT NO.: 001

PROJECT NAME: Cocoa-Brevard Operations Center

CONSTRUCTION MANAGER: _____ PROJECT NO. 424014-1-52-01
AND 424014-32-01

CONTRACT NO.: E5L23 PHASE: _____ RFQ NO.: (#)

TRANSFER REQUESTED BY: _____ (Usually CM) DATE OF REQUEST: _____ (Date)

Upon the completion and execution of this Contingency Transfer Authorization by both parties to the Contract, the Construction Manager is authorized to commit funds from the Construction Manager Contingency and proceed with the work described below:

Description of Work:

| | |
|-----------------------|----------|
| RFCP #: (Description) | \$ _____ |
| RFCP #: (Description) | \$ _____ |
| Other: (Description) | \$ _____ |

Purpose of Contingency Transfer: Provide funding to Construction Manager to perform the work described above.

Attachments: Log of Contingency Transfers to date

CONTINGENCY IN PHASE GMP PRICE:

Original Guaranteed Maximum Price
\$ _____

Original CM Contingency Amount
\$ _____

Previous CM Contingency Transfers No. 00 to No. (#)
\$ _____

Net Increase or (Decrease) in CM Contingency by this Transfer
\$ _____

New CM Contingency Amount
\$ _____

APPROVALS:

Construction Manager _____ Date _____

Owner Project Manager _____ Date _____

EXHIBIT F
OWNER CONTINGENCY TRANSFER AUTHORIZATION

**COCOA-BREVARD OPERATIONS CENTER
OWNER CONTINGENCY TRANSFER AUTHORIZATION**

CCT NO.: 001

PROJECT NAME: Cocoa-Brevard Operations Center

CONSTRUCTION MANAGER: _____ PROJECT NO. 424014-1-52-01
AND 424014-32-01

CONTRACT NO.: E5L23 PHASE: _____ RFQ NO.: (#)

TRANSFER REQUESTED BY: _____ (Usually CM) DATE OF REQUEST: _____ (Date)

Upon the completion and execution of this Contingency Transfer Authorization by both parties to the Contract, the Construction Manager is authorized to commit funds from the Owner Contingency and proceed with the work described below:

Description of Work:

| | |
|-----------------------|----------|
| RFCP #: (Description) | \$ _____ |
| RFCP #: (Description) | \$ _____ |
| Other: (Description) | \$ _____ |

Purpose of Contingency Transfer: Provide funding to Construction Manager to perform the work described above.

Attachments: Log of Contingency Transfers to date

CONTINGENCY IN PHASE GMP PRICE:

Original Guaranteed Maximum Price
\$ _____

Original CM Contingency Amount
\$ _____

Previous CM Contingency Transfers No. 00 to No. (#)
\$ _____

Net Increase or (Decrease) in CM Contingency by this Transfer
\$ _____

New CM Contingency Amount
\$ _____

APPROVALS:

Construction Manager _____ Date _____

Owner Project Manager _____ Date _____

EXHIBIT G

FORMS

BID OPPORTUNITY LIST

Please complete and mail or fax to:
 Equal Opportunity Office
 605 Suwannee St., MS 65
 Tallahassee, FL 32399-0450
 TELEPHONE: (850) 414-4747
 FAX: (850) 414-4879

This information may also be included in your bid or proposal package.

Prime Contractor/Consultant: _____

Address/Telephone Number: _____

Bid/Proposal Number: _____

Quote Submitted MM/YR: _____

49 CFR Part 26.11 requires the Florida Department of Transportation to develop and maintain a "bid opportunity list." The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and materials supplies on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT assisted project. Prime contractors and consultants must provide information for Nos. 1, 2, 3 and 4 and should provide any information they have available on Numbers 5, 6, 7, and 8 for themselves, and their subcontractors and subconsultants.

| | | |
|---------------------------------|---|--|
| 1. Federal Tax ID Number: _____ | 6. <input type="checkbox"/> DBE | 8. Annual Gross Receipts |
| 2. Firm Name: _____ | <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Less than \$1 million |
| 3. Phone: _____ | | <input type="checkbox"/> Between \$1 - \$5 million |
| 4. Address: _____ | | <input type="checkbox"/> Between \$5 - \$10 million |
| _____ | 7. <input type="checkbox"/> Subcontractor | <input type="checkbox"/> Between \$10 - \$15 million |
| _____ | <input type="checkbox"/> Subconsultant | <input type="checkbox"/> More than \$15 million |
| 5. Year Firm Established: _____ | | |

| | | |
|---------------------------------|---|--|
| 1. Federal Tax ID Number: _____ | 6. <input type="checkbox"/> DBE | 8. Annual Gross Receipts |
| 2. Firm Name: _____ | <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Less than \$1 million |
| 3. Phone: _____ | | <input type="checkbox"/> Between \$1 - \$5 million |
| 4. Address: _____ | | <input type="checkbox"/> Between \$5 - \$10 million |
| _____ | 7. <input type="checkbox"/> Subcontractor | <input type="checkbox"/> Between \$10 - \$15 million |
| _____ | <input type="checkbox"/> Subconsultant | <input type="checkbox"/> More than \$15 million |
| 5. Year Firm Established: _____ | | |

| | | |
|---------------------------------|---|--|
| 1. Federal Tax ID Number: _____ | 6. <input type="checkbox"/> DBE | 8. Annual Gross Receipts |
| 2. Firm Name: _____ | <input type="checkbox"/> Non-DBE | <input type="checkbox"/> Less than \$1 million |
| 3. Phone: _____ | | <input type="checkbox"/> Between \$1 - \$5 million |
| 4. Address: _____ | | <input type="checkbox"/> Between \$5 - \$10 million |
| _____ | 7. <input type="checkbox"/> Subcontractor | <input type="checkbox"/> Between \$10 - \$15 million |
| _____ | <input type="checkbox"/> Subconsultant | <input type="checkbox"/> More than \$15 million |
| 5. Year Firm Established: _____ | | |

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
MBE UTILIZATION CERTIFICATION

FORM 375-040-24
CONTRACTUAL SERVICES
06/00

RFP NO. _____ FINANCIAL PROJECT NO. _____

DESCRIPTION: _____

I, _____, _____
(name) (title)

of _____, hereby certify that this firm:
(Name of Prime Consultant)

is a Certified Minority Business Enterprise (MBE), certified by the Minority Business Advocacy and Assistance Office of the Department of Labor and Employment Security.

is not a Certified Minority Business Enterprise (MBE), certified by the Minority Business Advocacy and Assistance Office of the Department of Labor and Employment Security.

I also certify that our firm will subcontract at least _____ % (percent) of the project costs on the above referenced project to Certified Minority Business Enterprises.

If I have indicated above that a portion of the project costs will be subcontracted to certified MBE(s), the firms considered as proposed MBE subconsultants/contractors and the types of services or commodities to be subcontracted are as follows:

MBE SUBCONSULTANTS/CONTRACTORS

TYPES OF SERVICES/COMMODITIES

I understand that the Prime Consultant's/Contractor's failure to utilize certified MBE(s) for the percent indicated, can be considered a breach of contract.

Signed: _____

Title: _____

Date: _____

THIS FORM MUST BE EXECUTED AND RETURNED WITH THE PRICE PROPOSAL TO RECEIVE POINTS FOR MBE UTILIZATION.

RECYCLED PAPER



STATE OF FLORIDA - DEPARTMENT OF TRANSPORTATION
**MINORITY BUSINESS ENTERPRISES (MBE)
PAYMENT CERTIFICATION**

This is to certify that _____
MBE Subcontractor / Subconsultant

received a progress payment of \$ _____ on _____ (date)

from _____ (Prime Contractor)

for labor and/or materials used on: Contract Number _____

Financial Project Number _____

County _____

Signed by Official of Prime Contractor / Consultant: _____

Date: _____ Typed or Printed Name _____

Title _____

Total dollars committed to MBE
Subcontractor / Subconsultant \$ _____

Total paid this month \$ _____

Total previously paid \$ _____

Total paid to date \$ _____

Signed by Official of MBE Subcontractor / Subconsultant: _____

Date: _____ Typed or Printed Name _____

Title _____

NOTE: Contractor/Consultant shall include the MBE Payment Certification Form with each pay request submitted and must be signed by both the MBE Subcontractor/Subconsultant and the Prime Contractor/Consultant.

- Distribution: 1) Owner's Project Manager
2) District FCO Coordinator
3) Central Procurement Office, Mail Station 20

LABOR AND MATERIALS PAYMENT BOND

PERFORMANCE BOND

IN WITNESS WHEREOF, Principal and Surety have executed these presents and the Surety has affixed its seal, this _____ day of _____, 20_____.

NOTE: BY SIGNATURE THE ATTORNEY-IN-FACT FOR THE SURETY ATTESTS THAT SAID SURETY COMPLIES WITH ALL PROVISIONS CONTAINED IN THE AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER.

CONTRACTOR: _____ Date: _____

Authorized Signature: _____

Print Name and Title: _____

NAME OF SURETY: _____ Date: _____

Signature (Attorney-in-Fact): _____ (Affix Seal)

Signature of Florida Resident Agent: _____

Print Full Name, Address, and Telephone No.: _____

CONTRACTOR SHALL RECORD THIS BOND IN THE PUBLIC RECORDS OF THE COUNTY WHERE THE IMPROVEMENT IS LOCATED PRIOR TO COMMENCING THE WORK IN ACCORDANCE WITH SECTION 255.05(1)(a), FLORIDA STATUTES.

NOTES CONCERNING SURETY AND EXECUTION:

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Owner, the Surety shall comply with all of the requirements of Non-Technical Specifications, Section A, Instructions to the Bidders.

B. EXECUTION OF BOND

1. Enter the Surety's name and address on each copy of the Bond in the space provided.
2. Have each copy of the Bond signed by the same person that signed the Contract Agreement on behalf of the Contractor (affix Corporate Seal, if appropriate).
3. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety. Put the date the signature was affixed in the space provided. Print that person's name in the place provided on each copy of the Bond. Also, have the Surety's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
4. Have each copy of the Bond signed by a Florida Resident Agent (Reference Sections 624.425 and 624.426, Florida Statutes). Print that person's name, address and phone number in the place provided on each copy of the Bond. This may be the same person indicated in B.3 above, if this person is a Florida Resident Agent and is also authorized to sign on behalf of the Surety as Attorney-In-Fact.
5. Each copy of the Bond must have a Power of Attorney attached indicating that the person in item B.3 above is authorized to sign on behalf of the Surety.
6. Each copy of the Power of Attorney must have the Surety's Corporate Seal manually affixed unless facsimile seal is authorized.
7. The date of execution of the Power of Attorney is the same as the date shown on the signature line for the Surety Attorney-In-Fact.
8. If Bond is backed by the Small Business Administration, then a certified true and correct copy of the Surety Bond Guarantee Agreement, SBA Form 990, must be attached to each copy of the Bond.

IN WITNESS WHEREOF, Principal and Surety have executed these presents and the Surety has affixed its seal, this _____ day of _____, 20_____.

NOTE: BY SIGNATURE THE ATTORNEY-IN-FACT FOR THE SURETY ATTESTS THAT SAID SURETY COMPLIES WITH ALL PROVISIONS CONTAINED IN THE AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER.

CONTRACTOR: _____ Date: _____

Authorized Signature: _____

Print Name and Title: _____

NAME OF SURETY: _____ Date: _____

Signature (Attorney-in-Fact): _____ (Affix Seal)

Signature of Florida Resident Agent: _____

Print Full Name, Address, and Telephone No.: _____

CONTRACTOR SHALL RECORD THIS BOND IN THE PUBLIC RECORDS OF THE COUNTY WHERE THE IMPROVEMENT IS LOCATED PRIOR TO COMMENCING THE WORK IN ACCORDANCE WITH SECTION 255.05(1)(a), FLORIDA STATUTES.

NOTES CONCERNING SURETY AND EXECUTION:

A. SURETY COMPANY REQUIREMENTS

To be acceptable to the Owner, the Surety shall comply with all of the requirements of AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER, Article 12.1, Bonds,

B. EXECUTION OF BOND

1. Enter the Surety's name and address on each copy of the Bond in the space provided.
2. Have each copy of the Bond signed by the same person that signed the Contract Agreement on behalf of the Contractor (affix Corporate Seal, if appropriate).
3. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety. Put the date the signature was affixed in the space provided. Print that person's name in the place provided on each copy of the Bond. Also, have the Surety's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
4. Have each copy of the Bond signed by a Florida Resident Agent (Reference Sections 624.425 and 624.426, Florida Statutes). Print that person's name, address, and phone number in the place provided on each copy of the Bond. This may be the same person indicated in B.3 above, if this person is a Florida Resident Agent and is also authorized to sign on behalf of the Surety as Attorney-In-Fact.
5. Each copy of the Bond must have a Power of Attorney attached indicating that the person in item B.3 above is authorized to sign on behalf of the Surety.
6. Each copy of the Power of Attorney must have the Surety's Corporate Seal manually affixed unless facsimile seal is authorized.
7. The date of execution of the Power of Attorney is the same as the date shown on the signature line for the Surety Attorney-In-Fact.
8. If Bond is backed by the Small Business Administration, then a certified true and correct copy of the Surety Bond Guarantee Agreement, SBA Form 990, must be attached to each copy of the Bond.

LIST OF SUBCONTRACTORS

THIS LIST IS ATTACHED TO, AND IS AN INTEGRAL PART OF THE BID SUBMITTED BY: Date: _____

Bidder's Full Name: _____

Street Address: _____

City, State, Zip Code: _____

FOR CONSTRUCTION OF: _____

The undersigned, hereinafter called "Bidder," lists below the name of each subcontractor who will perform the phases of the work indicated. Failure of the Bidder to supply sufficient information to allow verification of the Corporate and Discipline License Status of the subcontractor may deem the bid as non-responsive and rejected. If applicable, complete the Minority Business Enterprises (MBE) Column identifying whether the Subcontractor is a certified or non-certified MBE. (NOTE: MBE data shall in no way influence the bid selection, order of acceptances, or rejection.)

| TYPE OF WORK / PHASE SUBCONTRACT | NAME OF SUBCONTRACTOR | CORPORATE - OR - NON-CORPORATE | DISCIPLINE LICENSE STATUS | MINORITY BUSINESS ENTERPRISE (MBE) <i>(Certified - OR - Non-Certified)</i> |
|--|--------------------------|--------------------------------------|---------------------------------|--|
| | | | | |
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| | | | | |

NOTE: *If the prime contractor does not list a Subcontractor for the specified discipline(s), the prime contractor must have all necessary licenses to perform the work.*

Completed By: _____ (Signature of Bidder)

CONTRACTOR'S AFFIDAVIT / CERTIFICATE OF CONTRACT COMPLETION

FINANCIAL PROJECT NUMBER: _____

PROJECT NAME: _____

PROJECT LOCATION: _____

CONTRACTOR: _____

CONTRACT FOR: _____

CONTRACT DATE: _____ CONTRACT AMOUNT: \$ _____

CONTRACTOR'S AFFIDAVIT

I solemnly swear and affirm: The work under the above named contract and all amendments thereto have been completed in accordance with the requirements of said contract; that all costs incurred for equipment, materials, labor, and services against the project have been paid; that no liens have been attached against the project; that no suits are pending by reason of work on the project under the contract; that all Workers' Compensation claims are covered by Workers' Compensation insurance as required by law; that all public liability claims are adequately covered by insurance, and that the Contractor shall save, protect, defend, indemnify, and hold harmless the Owner from and against any and all claims which arise as a direct or indirect result of any transaction, event, or occurrence related to performance of the work contemplated under said contract.

Contractor's Signature: _____ Date: _____

Printed Name and Title: _____

Address: _____

STATE OF FLORIDA COUNTY OF _____

Personally appeared before me this _____ day of _____, YR
known (or made known to me to be the _____
(Sole Proprietor, Partner, or Corporate Officer's Name & Title)

Contractor(s), who, being by me duly sworn, subscribed to the foregoing affidavit in my presence.

(Form of Identification Produced)

(Notary Public - Print Name)

My Commission Expires: _____

(Notary Public - Signature)

CONTRACTOR'S AFFIDAVIT / CERTIFICATE OF CONTRACT COMPLETION

FINANCIAL PROJECT NUMBER: _____

PROJECT NAME: _____

CONTRACTOR: _____

CONTRACT DATE: _____ DATE OF FINAL COMPLETION: _____

CERTIFICATE OF ARCHITECT/ENGINEER:

I CERTIFY the work under the above Contract has been satisfactorily completed on the date set forth in accordance with the terms of the Contract; that the Contractor has submitted its sworn affidavit as evidence that the Contractor has paid all labor, materials, and other charges against the project in accordance with the terms of the Contract.

Architect/Engineer Contractor's Name: _____

By: _____ Date: _____

| <u>TO BE COMPLETED BY ARCHITECT/ENGINEER THROUGH SUBSTANTIAL COMPLETION PHASE</u> | <u>DATE</u> | <u>DAYS</u> | <u>LIQUIDATED DAMAGES to be Completed by the Owner</u> |
|---|-------------|-------------|--|
| 1. Notice to Proceed (N.T.P.) | | | @\$ Per Day = \$ |
| 2. Time Specified in Original Contract for Substantial Completion (S.C.) | | | |
| 3. Extension Granted by Change Orders (Days Between Original Contract S.C. and Final Contract S.C.) | | | |
| 4. Total Days Allowable to Substantial Completion (Add Lines 2 and 3) | | | |
| 5. Project Substantially Completed as Certified by Architect/Engineer (Total Days from N.T.P. through Date Certified by Architect/Engineer) | | | |
| 6. Substantial Completion Overrun (Subtract Line 4 from 5 and Enter Overrun) | | | |

THROUGH THE FINAL COMPLETION PHASE

| | | |
|---|--|--|
| 1. Time Specified in Contract, Between Substantial and Final Completion | | |
| 2. Extensions Granted by Change Orders (Days Between Substantial Completion and Final Completion) | | |
| 3. Total Days Allowable Between Substantial and Final Completion (Add Lines 1 and 2) | | |
| 4. Date Actually Completed and Total Days Between Actual Substantial Completion and Date Certified By Architect/Engineer as Actually Being Finally Completed. | | |
| 5. Final Completion Overrun (Subtract Line 3 from 4 and Enter Overrun) | | |

TOTAL LIQUIDATED DAMAGES Per Day = \$

Project Administrator's Signature: _____ Date: _____

CONTRACTOR'S CERTIFICATION OF NO ASBESTOS-CONTAINING MATERIALS

Project Name: _____

Project Location: _____

Financial Project Number: _____ Contract Number: _____

**I CERTIFY THAT NO MATERIALS CONTAINING ASBESTOS
WERE USED IN THE CONSTRUCTION OF THIS PROJECT.**

Contractor's Signature

Date

Contractor's Name (Typed)

Name of Contractor's Contractors:

Street Address:

City, State and Zip:

Telephone: () _____ Fax: () _____

FEID Number:

CONSTRUCTION CONTRACT CHANGE ORDER

Change Order No.: _____ Contract No.: _____ Financial Project No.: _____
 State Project Name: _____

Architect/Engineer: _____ Contractor: _____
 Address: _____ Address: _____
 City: _____ City: _____
 State: _____ Zip: _____ State: _____ Zip: _____
 Telephone: _____ Telephone: _____

| DESCRIPTION OF CHANGE (attach additional sheet if necessary) | | | Decrease In | Increase In |
|---|--------|------|-------------------------|-------------|
| | | | | |
| Notice to Proceed Date | | | Original Contract Sum | |
| Contract Time | # Days | Date | Contract Sum | |
| Original Contract Time | | | Subtotal | |
| Present Contract Time | | | Net-Add- (Deduct) | |
| This Change-Add- (Deduct) | | | Present Contract Sum | |
| New Contract Time | | | New Contract Sum | |

The Change Order is an amendment to the Contract Agreement between the Contractor and Owner, and all contract provisions shall apply unless specifically exempted. The amount and time change designated are the maximum agreed to by both the Owner and Contractor for this change. In consideration of the foregoing adjustments in contract time and contract sum the Contractor hereby releases the Owner from all claims, demands, or causes of action arising out of the transactions, events and occurrences giving rise to this Change Order. This written Change Order is the entire agreement between the Owner and Contractor with respect to this Change Order. No other agreements or modifications shall apply to this contract amendment unless expressly provided herein.

RECOMMENDED: _____ AGREED: _____ AGREED: _____

EXHIBIT H
BASIS OF DESIGN